

RESOLUTION NO. 017-22R

A RESOLUTION APPROVING THE PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS AND AFFIDAVIT UNDER OHIO REVISED CODE CHAPTER 1710 AND DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF SANDUSKY, OHIO IN COOPERATION WITH THE CITY OF SANDUSKY, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT, AND DECLARING IT AN EMERGENCY (333 E WASHINGTON ST. PROJECT); AND DECLARING THAT THIS RESOLUTION SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

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 City of Sandusky, Ohio Energy Special Improvement District (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an ESID; and

WHEREAS, the City of Sandusky, Ohio Energy Special Improvement District Program 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 Sandusky, 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, Name One, Yellowstone LLC, an Ohio limited liability company (the “Owner”), as the owner of certain real property located within the City of Sandusky, Ohio (the “City”), has identified certain real property located at 333 East Washington Street, Sandusky, Ohio and having Erie County Auditor Parcel Number 56-01157.000 (the “Project Site”), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Owner has determined to submit to the City Manager and the City Commission of the City (the “Commission”), a *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”), together with a *Supplement to Plan for 333 E Washington St. Project* (the “Supplemental Plan”), 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 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

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WHEREAS, the Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2 of Article VIII of the Ohio Constitution, including, without limitation, the Project, and the Petition further identifies the amount and length of the special assessments to be imposed with respect to the Project; 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, this Commission has determined that it is necessary 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 Resolution should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter so the Owner may begin work on the special energy improvement project on the Property and the District may take advantage of financing available to it for a limited time; and

WHEREAS, this Commission, 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 Commission has determined to approve the Petition and the Supplemental Plan; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Resolution** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This Commission approves the Petition and the Supplemental Plan attached hereto as Exhibit "A".

Section 2. This Commission 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 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 3. Pursuant to Ohio Revised Code Section 1710.02(G)(4), this Commission determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, 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 Commission 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. This Commission 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 (i) the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition and the Supplemental Plan, and (ii) 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 reasonable 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; reasonable 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 reasonable obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and reasonable 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 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, the

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Supplemental Plan, and profiles, specifications, and estimates of cost of the Project, all of which are on file with the Commission Clerk and open to the inspection of all persons interested. This Commission further 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 5. This Commission determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition, construction, 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 6. The plans and specifications and total cost of the Project now on file in the office of the Commission Clerk 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 7. Pursuant to and subject to the provisions of a valid Petition signed by the owners of one hundred percent (100%) of the Project Site, the entire cost of the Project shall be paid by the Special Assessments levied against the Project Site, 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 8. The method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Project Site as set forth in the Petition and the Supplemental Plan.

Section 9. The lots or parcels of land to be assessed for the Project shall be the Project Site, as described in Exhibit "A" to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

Section 10. The Special Assessments shall be levied and paid in 58 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 each 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 \$904,903.00. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on

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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. As requested in the Petition, the final aggregate amount of the Special Assessments may be in an amount less than the aggregate amount of \$904,903.00 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 \$904,903.00, the Property 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 Erie 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 County Auditor of Erie 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 Erie County, Ohio.

Section 11. The City Manager is authorized and directed to prepare and file in the office of the Commission Clerk 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 12. The Owner has, in the Petition, each waived the requirement for the City to, upon the filing of the estimated Special Assessments with the Commission Clerk, serve notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the Owner, as the owners of the Project Site, as provided in Section 727.13 Ohio Revised Code. To the extent the Owner has not waived the applicable procedural requirements of Chapter 727 of the Ohio Revised Code, the appropriate officials of the City shall also comply with the applicable procedural requirements of Chapter 727 of the Ohio Revised Code.

Section 13. The City Manager 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 14. 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 15. This Commission 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 Project Site. 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, including the right to consider the Special Assessments authorized by the Petition within the limitations contained in Ohio Revised Code Section 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- (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 16. If any section, phrase, sentence, or portion of this Resolution is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 17. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Resolution were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 18. That for the reasons set forth in the preamble hereto, this

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Resolution is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: February 28, 2022