Legislation Details (With Text)

File #:	R-004-19	**Version:**	1	**Name:**	
Type:	Resolution			**Status:**	Agenda Ready
File created:	12/21/2018			**In control:**	City Council
On agenda:	1/8/2019			**Final action:**	1/8/2019
Title:	Accepting the petition of KG Funding, LLC. for special assessments for various special energy improvement projects in accordance with Chapters 1710 and 727 of the Ohio Revised Code; declaring the necessity of proceeding with the special energy improvement projects and approving the plans and specifications therefor; stating the method for making the special assessments against the benefitted properties and the amount of such special assessments; and declaring an emergency.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	1. Exhibit A, B & C, 2. Petition, 3. Agreement, 4. Audio: Agenda Review 1/2/2019, 5. Audio: Council Meeting1/8/19				

Date	Ver.	Action By	Action	Result
1/8/2019	1	City Council	Dispense with the rules of Council requiring...	Pass
1/8/2019	1	City Council	declare emergency	Pass
1/8/2019	1	City Council	passage	Pass

All Council Members

Accepting the petition of KG Funding, LLC. for special assessments for various special energy improvement projects in accordance with Chapters 1710 and 727 of the Ohio Revised Code; declaring the necessity of proceeding with the special energy improvement projects and approving the plans and specifications therefor; stating the method for making the special assessments against the benefitted properties and the amount of such special assessments; and declaring an emergency.

SUMMARY & BACKGROUND:

The City of Toledo, City of Oregon, City of Maumee, City of Northwood, Township of Monclova, Township of Springfield, Township of Swanton, Township of Sylvania, Ohio and the Toledo-Lucas County Port Authority ("Port Authority") have partnered to create an Energy Special Improvement District ("District") under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Northwest Ohio Advanced Energy Improvement District ("Corporation"), to govern the District. Property owners within the District are permitted to make certain "energy efficiency improvements" to their properties, which constitute a "special energy improvement project", and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments.

KG Funding, LLC (the "Petitioner") is the owner of 100% of the property described on **Exhibit A**

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attached hereto (the "Property"). The Petitioner has executed an Energy Project Agreement (the "Agreement") with the Northwest Ohio Advanced Energy Improvement District. A copy of the Agreement is attached to the Petition as **Exhibit C**.

Pursuant to the Agreement, and upon Application to the Corporation for membership and financing of special energy improvement projects to the Property; the Port Authority, Corporation, and the Petitioner have caused an energy audit to the property to be completed.

The energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which the Petitioner has determined to proceed with implementation, and to pay by way of special assessments.

The Petitioner has submitted to this Council a petition ("Petition") seeking (i) the addition certain of its property to the District and (ii) approval of an amendment to the District's comprehensive plan for special energy improvement projects to include the KG Funding Energy Improvement Project (the "Project" or the "KG Funding Energy Improvement Project") and requesting that the Project be undertaken by the District and that the costs thereof be specially assessed against the Property of the Petitioner specially benefited thereby.

A complete list and description of the KG Funding Energy Improvement Project is on file with the Clerk of Toledo City Council and is attached as Exhibit B to this Resolution. Exhibit B provides the following information for the KG Funding Energy Improvement Project:

1. Identification of the parcel number and name of the property/building to be improved;
2. A description of the nature of the special energy improvement projects for the particular parcel;
3. The estimated amount of the special assessment to be levied against the parcel of property and the number of years the special assessment will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law).

The total dollar cost of the KG Funding Energy Improvement Project, capitalized interest on the Port Authority's revenue bonds, reserve fund for the Port Authority's bonds, the cost of issuance of the Port Authority's revenue bonds, or the associated costs of issuance of the Northwest Ohio Advanced Energy Improvement District's revolving loan fund (collectively, the "Project"), is estimated to be One Hundred Twenty-Six Thousand Two Hundred Seventy-Eight Dollars and Forty-Three Cents ($126,278.43). Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority's revenue bonds and the scheduled amounts payable as the Port Authority administrative fee, the Port authority program administration fee, the trustee fee, not including the Lucas County, Ohio special assessment collection fee due with respect to each semi-annual payment.

The Port Authority and the District will fund the cost of the Project through either the issuance of bonds or the revolving loan fund. Ultimately, the loan will be repaid over time from the amounts the Petitioner pays as special assessments. The Petitioner, in turn, is expected to be able to pay the special assessments from the energy savings estimated to be achieved as a result of the Project.

The annual special assessments for the Project are to be paid in semi-annual payments over fourteen (14) years. The plans and specifications for the KG Funding Energy Improvement Project are on file with the Clerk of Council. The Petitioner's petition also waives 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, Chapter 727 of the Revised Code, the Toledo City Charter and the Toledo Municipal Code. The Petitioner consents to the immediate imposition of the special assessments upon the Property specially

benefited by the Project.

This special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited properties. This resolution accepts and approves the petition from the Petitioner to begin that special assessment process, and is accompanied by an ordinance to proceed with the Petitioner. When the KG Funding Energy Improvement Project is complete and the final costs known, an assessing ordinance directing that the necessary special assessments be made against the benefited Property will be presented to the Council. NOW, THEREFORE,

Be it resolved by the Council of the City of Toledo:

SECTION 1. That this Council accepts and approves the Petition of the Petitioner for the KG Funding Energy Improvement Project described herein and in Exhibit B to this Resolution, which is on file with the Clerk of Council. All of the findings and determinations contained in the preceding Summary and Background section are incorporated herein and adopted as substantive findings and determinations of this Council.

SECTION 2. That this Council (i) accepts and confirms the inclusion of the Property listed in Exhibit A in the District, which, pursuant to Chapter 1710 of the Ohio Revised Code, is governed by the Corporation, and (ii) declares the necessity of the acquisition, installation and construction of the KG Funding Energy Improvement Project, which shall be constructed on the Property of the Petitioner identified in Exhibit A.

SECTION 3. That this Council hereby confirms its approval of the plan for the District, including (and as supplemented and amended by and to include) the plans for the KG Funding Energy Improvement Project, and the Corporation is authorized and directed to cause the KG Funding Energy Improvement Project to be constructed under such contracts as it determines to be appropriate under law and in accordance with the plan for the District, including (and as supplemented and amended by and to include) the plans for the KG Funding Energy Improvement Project.

SECTION 4. That the plans, specifications, estimates of costs, and profiles of the proposed KG Funding Energy Improvement Project identified in Exhibit B on file with the Clerk of Council and open to inspection are hereby approved, and the KG Funding Energy Improvement Project shall be acquired, installed and constructed in accordance with those plans and specifications.

SECTION 5. That this Council hereby finds and determines that (i) the KG Funding Energy Improvement Project is conducive to the public health, convenience and welfare of the City and its inhabitants and (ii) the Property of the Petitioner, identified in Exhibit A is specially benefited by the Project.

SECTION 6. This Council hereby 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, Chapter 727 of the Revised Code, the Toledo City Charter and the Toledo Municipal Code, and consents to the immediate imposition of the special assessments upon the Property as identified in Exhibit A. This waiver encompasses but is not limited to waivers of the following rights under the Revised Sections referred to below:

- The right to notice of the adoption of the Resolution of Necessity under Sections 727.13 and 727.14;
- The right to limit the amount of the special assessment under Sections 727.03 and 727.06;
- The right to file an objection to the special assessment under Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment

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Equalization Board under Sections 727.16 and 727.17;

- The right to file any claim for damages under Sections 727.18 through 727.22 and Section 727.43;
- The right to notice that bids or quotations for KG Funding Energy Improvement Project may exceed estimates by 15%;
- The right to seek a deferral of payments of special assessments under Section 727.251; and
- The right to notice of the passage of the assessing ordinance under Section 727.26.
- Any and all procedural defects, errors or omissions in the special assessment process.

SECTION 7. That the total cost of the KG Funding Energy Improvement Project shall be assessed against the Property of the Petitioner identified in Exhibit A in proportion to the benefits resulting from the KG Funding Energy Improvement Project.

SECTION 8. That the total cost of the KG Funding Energy Improvement Project shall include any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs, the amount of any damages resulting from the Project and the interest thereon, 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 therein, 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 issued by the Port Authority to provide a loan to the Corporation to pay costs of the Project in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities issued by the Port Authority, the administrative fee, together with all other necessary expenditures.

SECTION 9. That the estimated assessments heretofore prepared and now on file with the Clerk of Council and amounting in the aggregate to $175,570.90 be and are hereby adopted. The special assessments to be levied shall be paid according to the following schedule: in 14 annual (28 semi-annual) installments, with interest thereon at the same rate or rates as shall be borne by the securities to be issued by the Port Authority and loaned to the Corporation for the KG Funding Energy Improvement Project in anticipation of its receipt of the special assessments. Each semi-annual payment represents the payment of a portion of the principal of and interest on the Northwest Ohio Advanced Energy Improvement District's Bond Fund and the administrative fee, not including the Lucas County, Ohio special assessment collection fee due with respect to each semi-annual payment.

SECTION 10. That the City does not intend to issue its own securities in anticipation of the levy or collection of the special assessments for the KG Funding Energy Improvement Project, which instead shall be paid for initially from proceeds of the securities issued by the Port Authority for that purpose, and repaid through the special assessment process described herein.

SECTION 11. That this Council finds and determines that all formal actions of this Council and any of its Committees concerning and relating to the adoption of this Resolution were taken, and all deliberations of this Council or any of its Committees that resulted in such formal actions were held in meetings open to the public, in compliance with all legal requirements including those of Section 121.22 of the Revised Code.

SECTION 12. That this Resolution is declared to be an emergency measure and shall take effect and be in force from and after its adoption. The reason for the emergency lies in the fact that this Resolution is necessary for the immediate preservation of the public peace, health, safety and property; and for the further reason that immediate action is necessary in order to conserve energy, protect the environment of the City, and undertake construction of necessary public improvements, as well as, provide and enable the timely levying,

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certification and collection of the special assessments for the KG Funding Energy Improvement Project.

Vote on emergency clause: yeas _____, nays _____.

Adopted: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____ _____
Clerk of Council President of Council

Approved: _____ _____
Mayor

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