

Proposed: 11/04/2024

ORDINANCE NO. 209-2024(F), *First Reading*
(As amended 11/04/2024)

By Mayor Seren

An Ordinance authorizing the Mayor to enter into one or more installment payment contracts and related agreements in order to finance certain energy conservation improvements pursuant to Section 717.02 of the Ohio Revised Code; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the City of Cleveland heights, Ohio (the "City") desires to implement energy conservation measures pursuant to Section 717.02 of the Ohio Revised Code; and

WHEREAS, on September 3, 2024, the City adopted Ordinance No. 152-2024, which authorized the City to enter into a guaranteed savings contract with Leopardo Energy in an amount not to exceed Eighteen Million Dollars (\$18,000,000.00) (the "Contract"); and

WHEREAS, the City is authorized and empowered under the provisions of Section 717.02 of the Ohio Revised Code, as amended, to finance energy conservation improvements (as defined in such statute) by entering into installment payment contracts or other appropriate financing instruments for the purchase and installation of energy conservation improvements such as those being acquired and installed under the Contract (collectively, the "Project") upon such terms and conditions as the City shall deem advisable; and

WHEREAS, the City desires to finance all or some portion of the Project pursuant to one or more installment payment contracts pursuant to Section 717.02 of the Ohio Revised Code; and

WHEREAS, the installment payment contracts to be entered into by the City pursuant to this Ordinance are not subject to competitive bidding requirements; and

WHEREAS, the City has determined that it is necessary and desirable and in the best interest of the City to enter into one or more installment payment contracts to finance the costs of the Project, subject to certain terms and conditions set forth in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Council hereby authorizes the City to enter into one or more installment payment contracts in a principal amount not to exceed eighteen-million

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dollars (\$18,000,000.00), at a term not to exceed twenty (20) years, and at an interest rate not to exceed Five Percent (5%)(collectively, the "Installment Contract"). The Installment Contract shall be entered into by and between the City and one or more lending institutions or banks (collectively, the "Lender") selected by the appropriate officers of the City on terms and conditions acceptable to such officers of the City, with such changes as shall not be materially adverse to the City and as approved by the Director of Law, all of which shall be conclusively evidenced by the execution thereof, subject to the conditions set forth in this Ordinance, with not less than 20% of the costs of the contract to be paid within two years of the date of purchase and the remaining balance to be paid in accordance with Ohio Revised Code Section 717.02 (D)(2). The officers and employees of the City are hereby authorized to take all action necessary or reasonably required by the parties to the Installment Contract to carry out, give effect to and consummate the transactions contemplated thereby (including the execution (in writing or electronically) and delivery of any Escrow and Account Control Agreement with the Lender and an escrow agent, any memorandum of understanding with Leopardo Energy or the applicable vendor, Disbursement Requests, Final Acceptance Certificate or other closing or other documents as contemplated in the Installment Contract.

SECTION 2. Reimbursement for Project Costs. If the City enters into the Installment Contract, the City may be reimbursed out of the proceeds thereof for expenditures paid or incurred in connection with the Project prior to the date of this Ordinance in accordance with the requirements set forth in Treasury Regulations Section 1.150-2. This Ordinance shall constitute a declaration of the City's intent with respect to reimbursing expenses of the Project with proceeds of the Installment Contract within the meaning of Treasury Regulations Section 1.150-2.

SECTION 3. Preparation of Documents. Lathrop GPM LLP, as special tax counsel, together with the Director of Law and other officers and employees of the City, are hereby authorized to work with the Lender, Leopardo Energy, and their respective counsel and others, to prepare for execution by the City all documents necessary to affect the Installment Contract and other actions contemplated hereunder in connection with the financing of the Project.

SECTION 4. Publication of Notice. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights, or by posting the full text of this Ordinance on the City of Cleveland Heights website.

SECTION 5. It is necessary that this Ordinance become immediately effective as an emergency measure necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to realize advantageous financing, energy credit applications, and construction costs for planned energy conservation measures. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this

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Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.



TONY CUDÁ
President of Council



ADDIE BALESTER
Clerk of Council

PASSED: November 4, 2024

Presented to Mayor: 11/4/2024

Approved: 11/4/2024



KAHLIL SEREN
Mayor