ORDINANCE NO. 87-20

AN ORDINANCE AMENDING ORDINANCE NO. 70-17 LEVYING SPECIAL ASSESSMENTS FOR THE CONSTRUCTION AND RECONSTRUCTION OF A PORTION OF CHESTER ROAD FROM A TWO LANE TO A FIVE LANE ROADWAY, TOGETHER WITH ALL APPURTENANCES AND RELATED IMPROVEMENTS THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, Council (the "Council") of the City of Avon, Ohio (the "City") duly adopted Resolution No. R-4-16 on March 11, 2016 (the "Resolution of Necessity") and declared the necessity of the construction and reconstruction of a portion of Chester Road from a two lane to a five-lane roadway, with all appurtenances and related improvements thereto (the "Assessment Project"), as further described in the Resolution of Necessity and in the underlying Petition submitted by NWQ Jaycox/I-90 LLC attached as Exhibit A to the Resolution of Necessity;

WHEREAS, the City completed the Assessment Project and determined the final costs of the Assessment Project, and this Council passed Ordinance No. 70-17 on July 10, 2017 (the "Original Assessing Ordinance"), levying special assessments on the parcels benefitted by the Assessment Project as further described in the Assessing Ordinance described below;

WHEREAS, this Council previously amended the Original Assessing Ordinance in Ordinance No. 82-17, passed on September 11, 2017 (the "Amending Ordinance" and, together with the Original Assessing Ordinance, the "Assessing Ordinance"), to reflect certain changes in ownership of assessed parcels of property since the adoption of the Resolution of Necessity;

WHEREAS, on August 14, 2017, Kopf Construction Corporation filed a complaint (the "Kopf Litigation") in the Lorain County Court of Common Pleas for declaratory judgment, preliminary injunction, and permanent injunction against the City, alleging, among other things, that the assessments placed on the four parcels of property owned by the Kopf Construction Corporation (the "Kopf Parcels") exceeded the value of the benefit accruing to the Kopf Parcels;

WHEREAS, on July 15, 2020, the Lorain County Court of Common Pleas found that the special benefit conferred on the Kopf Parcels was an aggregate amount of $150,895.97 (the "Revised Kopf Assessment") and declared that Kopf Construction Corporation must either pay the Revised Kopf Assessment within 60 days of the judgment entry or be assessed for the amount of the Revised Kopf Assessment over a period of 20 years in annual installments;

WHEREAS, Kopf Construction Corporation paid the Kopf Revised Assessment to the City in full and, accordingly, the Kopf Parcels are no longer subject to special assessments under the Assessing Ordinance and in accordance with the Lorain County Court of Common Pleas' judgment entry;

WHEREAS, NWQ Jaycox/I-90 LLC, as the petitioner to the City for the levy and collection of the special assessments described in the Assessing Ordinance, has agreed to assume the difference between the original assessed amount on the Kopf Parcels and the Revised Kopf Assessment, and be assessed in such amount over the next 18 years;

WHEREAS, since the passage of the Amending Ordinance, certain permanent parcel numbers subject to the special assessments in in the Assessing Ordinance have changed as a result of lot splits and conveyances of property; and

WHEREAS, Council finds and determines that amending the Assessing Ordinance to (a) reflect the payment by Kopf Construction Corporation in full of the Revised Kopf Assessment and thereby remove the Kopf Parcels from the assessments levied in the Assessing Ordinance, (b) increase the assessment of certain parcels owned by NWQ Jaycox/I-90 LLC in accordance with its agreement with the City to assume the difference between the original assessed amount on the Kopf Parcels and the Revised Kopf Assessment, and (c) update certain parcel numbers due to lot splits and conveyances of such parcels, is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Ohio, Lorain County, Ohio that:

Section 1. Exhibit A to the Assessing Ordinance is amended in its entirety as set forth in the attached ***Exhibit A***.

Section 2. All other sections and provisions of the Assessing Ordinance, except as otherwise amended in this Ordinance or by the Lorain County Court of Common Pleas in the Kopf Litigation, remain in full force and effect.

Section 3. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that the special assessments can be certified to the Lorain County Auditor in a timely manner to place them upon the tax list for collection in 2021; provided it receives the affirmative vote of at least six members elected to this Council; otherwise it shall take effect and be in force after the earliest period allowed by law.

PASSED: ______________________ DATE SIGNED: _________________________

By: ______________________________
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: __________________

____
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

____
John A. Gasior, Law Director

ATTEST:

____
Barbara Brooks
Clerk of Council

Posted: _______________________
In Five Places, as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

Exhibit A To Ord. No. 87-20

Schedule of Special Assessments

The Property will be subject to special assessments for the Assessment Project in accordance with Ohio Revised Code Chapter 727 and accompanying Ordinance No. 70-17.

The schedule of Special Assessments for the Assessment Project is as follows.[1]

The portion of the Assessed Property, having title ownership of record as of the date of passage of Resolution R-4-16 by NWQ Jaycox/I-90 LLC, which, as of the date of this Ordinance, is assigned permanent parcel numbers (a) 04-00-016-104-055, (b) 04-00-016-104-056, (c) 04-00-016-104-057, (d) 04-00-016-104-058, (e) 04-00-016-104-059, (f) 04-00-021-000-293, (g) 04-00-021-000-295, (h) 04-00-021-000-296, (i) 04-00-021-000-299, and (j) 04-00-021-000-300 in the records of the Lorain County Auditor, shall be assessed a total of $3,285,651 plus, for any portion of that amount not paid within 30 days of Ordinance No. 70-17, interest due and payable at the same rate or rates of interest and for the same period as the securities issued in anticipation of the Special Assessment for which payments shall be made in accordance with Resolution No. R-4-16 and Section 3 of Ordinance No. 70-17 in twenty (20) payments of substantially equal installments due as of January 31 of each taxable year subject to adjustment by the Lorain County Auditor under certain conditions as provided for in Ohio Revised Code Chapter 323.

The portion of the Assessed Property, having title ownership of record as of the date of passage of Resolution R-4-16 by NWQ Jaycox/I-90 LLC, which, as of the date of Ordinance No. 87-20, is assigned permanent parcel numbers (a) 04-00-016-104-057, (b) 04-00-016-104-058, and (c) 04-00-021-000-300 in the records of the Lorain County Auditor, shall be assessed, in addition to the amount assessed in the paragraph above, a total of $301,791.94 plus, for any portion of that amount not paid within 30 days of Ordinance No. 70-17, interest due and payable at the same rate or rates of interest and for the same period as the securities issued in anticipation of the Special Assessment for which payments shall be made in accordance with Resolution No. R-4-16 and Section 3 of Ordinance No. 70-17 in eighteen (18) payments of substantially equal installments, beginning in tax year 2020 (collection year 2021), and due as of January 31 of each taxable year subject to adjustment by the Lorain County Auditor under certain conditions as provided for in Ohio Revised Code Chapter 323.

The portion of the Assessed Property, having title ownership of record as of the date of the passage of Resolution R-4-16 by NWQ Jaycox/I-90 LLC and having been subsequently transferred to Bendix Commercial Vehicle Systems, Inc. and then to the Lorain County Port Authority, which, as of the date of this Ordinance, is assigned permanent parcel numbers 04-00-016-102-100 and 04-00-021-000-291 (fka permanent parcel numbers 04-00-016-102-044 and 04-00-021-000-248) in the records of the Lorain County Auditor, shall be assessed a total of $2,358,805 plus, for any portion of that amount not paid within 30 days of Ordinance No. 70-17,

[1] Parcel numbers for certain assessed properties may not match those set forth in the Assessing Ordinance and the Resolution of Necessity as a result of numerous lot splits and conveyances of property since the adoption of the Resolution of Necessity and the passage of the Assessing Ordinance.

interest due and payable at the same rate or rates of interest and for the same period as the securities issued in anticipation of the Special Assessment for which payments shall be made in accordance with Resolution No. R-4-16 and Section 3 of Ordinance No. 70-17 in twenty (20) payments of substantially equal installments due as of January 31 of each taxable year subject to adjustment by the Lorain County Auditor under certain conditions as provided for in Ohio Revised Code Chapter 323.

The portion of the Assessed Property, having title ownership of record as of the date of passage of Resolution R-4-16 by NWQ Jaycox/I-90 LLC, which, as of the date of this Ordinance, is assigned permanent parcel number 04-00-016-102-101 in the records of the Lorain County Auditor, shall be assessed a total of $545,311 plus, for any portion of that amount not paid within 30 days of Ordinance No. 70-17, interest due and payable at the same rate or rates of interest and for the same period as the securities issued in anticipation of the Special Assessment for which payments shall be made in accordance with Resolution No. R-4-16 and Section 3 of Ordinance No. 70-17 in twenty (20) payments of substantially equal installments due as of January 31 of each taxable year subject to adjustment by the Lorain County Auditor under certain conditions as provided for in Ohio Revised Code Chapter 323.

The portion of the Assessed Property, having title ownership of record as of the date of passage of Resolution R-4-16 by 35350 Group Partnership, which, as of the date of this Ordinance, is assigned permanent parcel numbers 04-00-021-000-290 (fka 04-00-021-000-116) in the records of the Lorain County Auditor (the “35350 Property”), shall be assessed a total of $98,161.08 of which $54,970.20 shall be assessed to the 35350 Property and $43,190.88 shall be assessed to property having present title ownership of record by NQW Jaycox I-90 LLC and assigned permanent parcel no. 04-00-021-000-300 (fka 04-00-021-000-292) in the records of the Lorain County Auditor, pursuant to an agreement between the owners of the referenced parcel numbers, plus, for any portion of those amounts not paid within 30 days of Ordinance No. 70-17, interest due and payable at the same rate or rates of interest and for the same period as the securities issued in anticipation of the Special Assessment for which payments shall be made in accordance with Resolution No. R-4-16 and Section 3 of Ordinance No. 70-17 in twenty (20) payments of substantially equal installments due as of January 31 of each taxable year subject to adjustment by the Lorain County Auditor under certain conditions as provided for in Ohio Revised Code Chapter 323.