

**Ordinance No. 126-2021**

**By Council Members:** McCormack, Bishop, Brancatelli and Kelley (by departmental request)

**An emergency ordinance giving consent of the City of Cleveland to the Director of Transportation of the State of Ohio for Towpath Phase 4 Trailhead; to apply for and accept any gifts or grants from any public or private entity; authorizing the Director of Capital Projects or Director of Public Works to enter into any relative agreements; and causing payment of the City's share to the State for the cost of the improvement.**

**WHEREAS**, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:**

**Section 1.** That it is declared to be in the public interest that the consent of the City of Cleveland is given to the Director of Transportation of the State of Ohio ("the State") to create a larger trailhead by removing excess parking and installing a greenspace buffer between trail users and vehicular parking at the terminus of the Towpath Trail Phase 4 (Tremont/Literary Trailhead to Canal Basin Park) in the City of Cleveland, including benches and interpretive elements with four (4) additive alternates for storm sewer, stone curbing, perennial plantings and grass plantings under plans, specifications and estimates approved by the State: Towpath Phase 4 Trailhead, PID 113726 (the "Improvement").

**Section 2.** That the City proposes to cooperate with the State in the cost of the Improvement by assuming and contributing the entire cost and expense of the Improvement, less the amount of federal funds allocated by the Federal Highway Administration, United States Department of Transportation. The City agrees to assume one hundred percent (100%) of the cost of preliminary engineering, right-of-way and environmental documentation. Also, the City agrees to assume and contribute 100% of the cost of any items included in the construction contract at the request of the City, which are determined by the State not eligible or made necessary by the Improvement. The share of the cost of the City is estimated in the amount of \$206,400, but the estimated amount is to be adjusted in order that the City's ultimate share of the Improvement shall correspond with the percentages of actual costs when the actual costs are determined.

**Section 3.** That the Director of Capital Projects or Public Works is authorized to enter into one or more agreements with the State necessary to complete the planning and construction of the Improvement, which agreements shall contain terms and conditions that the Director of Law determines shall best protect the public interest.

**Section 4. Utilities and Right-of-Way Statement.** The City agrees to acquire and/or make available to ODOT, under current State and Federal regulations, all necessary right-of-way required for the Improvement. The City also understands that right-of-way costs include eligible utility costs. The City agrees to be responsible for all utility accommodation, relocation and reimbursement and agrees that all such accommodations, relocations, and reimbursements shall comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

**Section 5. Maintenance.** Upon completion of the Improvement, and unless otherwise agreed, the City shall: (1) provide adequate maintenance for the Improvement under all applicable state and federal laws, including, but not limited to, 23 USC 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Improvement; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

**Section 6.** That the Director of Capital Projects or Public Works is authorized to enter into contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Improvement and to enter into contracts with the Director of Transportation necessary to complete the above-described project. Upon the request of ODOT, the Director of Capital Projects is also authorized to assign all rights, title and interests of the City to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

**Section 7.** That the City agrees that if Federal Funds are used to pay the cost of any consultant contract, the City shall comply with 23 CFR 172 in the selection of its consultant and the administration of the consultant contract. Further, the City agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The City agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Improvement. The City agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

**Section 8.** That this Council requests the State to proceed with the Improvement.

**Section 9.** That the Director of Capital Projects is authorized to apply for and accept any gifts or grants for this purpose from any public or private entity, including but not limited to NOACA; and that the Director is authorized to file all papers and execute all documents necessary to receive the funds under the grant; and that the funds are appropriated for the purposes described in this ordinance.

**Section 10.** That, when appropriate, the Director of Capital Projects is authorized to enter into one or more contracts with the railroads, Greater Cleveland Regional Transit Authority, the Northeast Ohio Regional Sewer District and other entities to obtain

services or to acquire property rights such as easements and licenses, necessary to construct the improvements described in this ordinance.

**Section 11.** That the Director of Capital Projects or Public Works is authorized to accept cash contributions from public or private entities, for infrastructure restoration costs associated with relocating, rehabilitating or reconstructing utility infrastructure for the Improvement.

**Section 12.** That the Director of Capital Projects or Public Works is authorized to apply and pay for permits, licenses or other authorizations required by any regulatory agency or public authority to permit performance of the work authorized by this ordinance.

**Section 13.** That the Director of Capital Projects or Public Works is authorized to enter into any agreements necessary to implement the Improvement.

**Section 14.** That the Clerk of Council is authorized and directed to transmit to the State three (3) certified copies of this ordinance immediately on its taking effect, and it shall become the basis for proceeding with the Improvement.

**Section 15.** That this Council authorizes payment to the State of the City's share of the Improvement from any all funds approved by the Director of Finance, payable from Fund Nos. 20 SF 552, 20 SF 559, 20 SF 561, 20 SF 565, 20 SF 572, 20 SF 577, 20 SF 584, 20 SF 590, 20 SF 595, future bond funds if issued for this purpose, and any other funds approved by the Director of Finance. (RQS 0103, RL 2021-15)

**Section 16.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the 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 March 29, 2021.**

**Effective March 30, 2021.**