

Ordinance No. 882-2020

By Council Members: Spencer, Johnson, 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 resurfacing a portion of Lake Avenue; authorizing the Director of Capital Projects to employ one or more professional consultants to design the improvement; to apply for and accept any gifts or grants from any public or private entity; authorizing 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 construct the following improvement under plans, specifications and estimates approved by the State: resurfacing Lake Avenue from West 117th Street to Detroit Road, PID 112460 (the "Improvement").

Section 2. That the City shall cooperate with the State in the development and construction of the Improvement and shall enter into a LPA Federal ODOT Let Project Agreement, if applicable, as well any other agreements necessary to develop and construct the Project. The City agrees to participate in the cost of the Improvement by assuming and contributing the entire cost and expense of the Improvement, less the amount of federal funds set aside by the Director of Transportation for the financing of the Improvement from funds allocated by the Federal Highway Administration, United States Department of Transportation. 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 City further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not approve a change order or extra work contract until it first gives notice, in writing, to the City. The City shall contribute its share of the cost of these items in accordance with other sections in this ordinance. The share of the cost of the City is estimated in the amount of \$850,000, 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 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 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 Project. 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 4. That the Director of Capital Projects is authorized to employ by contract or contracts one or more consultants or one or more firms of consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional services necessary to design the Improvement.

The selection of the consultant or consultants for the services shall be made by the Board of Control on the nomination of the Director of Capital Projects from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Capital Projects for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The contract or contracts authorized shall be prepared by the Director of Law, approved by the Director of Capital Projects, and certified by the Director of Finance.

Section 5. Authority to Sign. That the City authorizes the Director of Capital Projects to enter into and execute contracts with the Director of Transportation which are necessary to develop plans for and to complete the Improvement; and to execute contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project. Upon request of ODOT, the Director of Capital Projects is also empowered to execute any appropriate documents to affect the assignment of all rights, title, and interests of the City of Cleveland 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 6. 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 7. 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 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 the Director of Capital Projects 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 11. That the Director of Capital Projects is authorized to enter into any agreements necessary to implement the Improvement.

Section 12. 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 13. That this Council authorizes payment to the State of the City's share of the Improvement from Fund Nos. 20 SF 568, 20 SF 574, 20 SF 579, 20 SF 586, 20 SF 592, 20 SF 597, from the funds or funds to which are credited the proceeds from the sale of future bonds, if issued for this purpose, and any all funds approved by the Director of Finance. (RQS 0103, RLA 2020-73)

Section 14. 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.

Referred to the Directors of Capital Projects; City Planning Commission; Finance; and Law; Committees on Municipal Services and Properties; Development, Planning and Sustainability; and Finance.