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Ordinance No. 1144-2022

By Council Members McCormack, Howse, Bishop, Hairston and Griffin (by departmental request)

AN EMERGENCY ORDINANCE

Authorizing the Director of Capital Projects to apply to the District One Public Works Integrating Committee for state funding for constructing the Superior Midway separated bikeway from Public Square East Roadway to East 55th Street; giving consent of the City of Cleveland to the Director of Transportation for the improvement; to apply for and accept any gifts or grants for this purpose from any public or private entity; authorizing professional services, agreements with public and private entities, and any relative agreements; authorizing the Commissioner of Purchases and Supplies to acquire, accept, and record for right-of-way purposes any real property and easements necessary to make the improvement; and causing payment to ODOT of the City's share 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 the Director of Capital Projects is authorized to apply to the District One Public Works Integrating Committee for state funding for the following infrastructure capital improvement: constructing the Superior Midway separated bikeway from Public Square East Roadway to East 55th Street, PID 108259 (the "Improvement").

Section 2. That the Director of Capital Projects is authorized to apply to the District One Public Works Integrating Committee for state funding in the form of a loan or grant, or a combination of both, to obtain credit enhancements and loan assistance in support of the city's bonds issued for bridge and road improvements for the Improvement.

Section 3. That the Director of Finance, or other appropriate Director, is authorized to accept one or more loans or grants from the Ohio Public Works Commission to finance the Improvement; that the the Director of Finance, or other appropriate Director, is authorized to file all papers and execute all documents necessary to receive the funds under the loan or grant; and that the funds are appropriated for the purposes described in this ordinance.

Section 4. 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 Improvement.

Section 5. That the City shall cooperate with the State in the development and construction of Improvement and shall enter into a LPA Federal ODOT Let Project Agreement, if applicable, as well as any other agreements necessary to develop and construct the Improvement.

Section 6. That the City agrees to participate in the cost of the Improvement. The City agrees to assume and contribute 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 one hundred percent (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 herein.

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 administration of the consultant contract. Further the City agrees to incorporate the State'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 the State'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 the State and to assist the State in rating the consultant's performance through the State's Consultant Evaluation System.

Section 8. Authority to Sign. 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 Improvement.

Upon request of the State, the Director is also empowered to execute any appropriate documents to affect the assignment of all rights, title, and interests of the City to the State arising from any agreement with its consultant in order to allow the State 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 9. 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 10. 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, Title 23 USC 116; (2) provide ample financial provisions, as necessary, for 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 11. That this Council requests the State to proceed with the Improvement.

Section 12. 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 design the Improvement.

The selection of the 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 shall be prepared by the Director of Law, approved by the Director of Capital Projects and certified by the Director of Finance.

Section 13. That the Director of Capital Projects is authorized to apply for and accept any gifts or grants for the Improvement 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; and that the funds are appropriated for the purposes described in this ordinance.

Section 14. 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 15. That the Director of Capital Projects is authorized to accept cash contributions from public or private entities, for infrastructure costs associated with the Improvement. That the Director of Capital Projects is authorized to enter into agreements with the entities for this purpose.

Section 16. That the Director of Capital Projects is authorized to enter into one or more agreements with private utility companies to pay charges for the installation of underground lines in connection with the Improvement.

Section 17. That the Director of Capital Projects is authorized to enter into any agreements necessary to implement this ordinance, including but not limited to, a local public agency federal agreement with ODOT.

Section 18. That notwithstanding any provision of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary, the Commissioner of Purchases and Supplies is authorized to acquire, accept, and record for right-of-way purposes any real property

including but not limited to fee simple acquisitions, temporary easements, permanent easements, and work agreements as is necessary to make the Improvement. The consideration to be paid for the property and easements shall not exceed fair market value, as determined by the Board of Control

Section 19. That the Director of Capital Projects is authorized to execute on behalf of the City all documents necessary to acquire, accept, and record the property and easements and to employ and pay all fees for title companies, surveys, escrows, appraisers, and all other costs necessary for the acquisition of the property and easements.

Section 20. 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 21. That the Director of Capital Projects is authorized to cause payment to the State of the City's share of the Improvement.

Section 22. That the cost of this ordinance shall be paid from Fund Nos. 20 SF 568, 20 SF 574, 20 SF 579, 20 SF 586, 20 SF 592, 20 SF 597, 20 SF 702, 20 SF 712, the fund or funds to which are credited any gift or grant proceeds accepted under this ordinance, cash matches, cash contributions accepted and appropriated under this ordinance, and from any and all funds approved by the Director of Finance, including future bond funds if issued for this purpose. (RQS 0103, RL 2022-96)

Section 23. 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.

SM:nl
11-7-2022
FOR: Director DeRosa

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READ FIRST TIME on NOVEMBER 7, 2022 **REPORTS**
and referred to DIRECTORS of Capital Projects,
City Planning Commission, Finance, Law;
COMMITTEE on Municipal Services and Properties,
Development Planning and Sustainability,
Finance Diversity Equity and Inclusion

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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Published in the City Record _____

REPORT
after second Reading

PASSAGE RECOMMENDED BY COMMITTEE ON
MUNICIPAL SERVICES AND PROPERTIES
FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY COMMITTEE ON
DEVELOPMENT, PLANNING AND SUSTAINABILITY
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FINANCE, DIVERSITY, EQUITY and INCLUSION
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