

# Ordinance No. 632-2019

**Council Members J. Jones, Bishop, Johnson  
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 improving Miles Avenue from Warrensville Corporation Line to Broadway Avenue; to apply for and accept any gifts or grants from any public or private entity; authorizing a Local Project agreement and any other relative agreements; and causing payment of the City's share to the State for the cost of the improvement.

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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: improving Miles Avenue (SR 43-10.61), from Warrensville Corporation Line to Broadway Avenue, PID No. 85360 (the "Improvement").

Section 2. That the City proposed 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 \$1,800,000, 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 the Director of Capital Projects is authorized to enter into one or more agreements with the State necessary to complete the planning and

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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 the State, 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 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 Improvement. Upon the request of the State, the Director of Capital Projects is also authorized to assign 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 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

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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. 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 Improvement described in this ordinance.

Section 11. 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 12. That the Director of Capital Projects is authorized to enter into any agreements necessary to implement the Improvement.

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Section 13. That the Director of Capital Projects 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 14. That the Director of Capital Projects is authorized to enter into one or more Local Project Administration agreements with the Ohio Department of Transportation to fund and construct the Improvement.

Section 15. 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 16. That this Council authorizes payment to the State of the City's share of the Improvement from Fund Nos. 20 SF 520, 20 SF 528, 20 SF 534, 20 SF 540, 20 SF 546, 20 SF 554, 20 SF 563, 20 SF 568, 20 SF 574, 20 SF 579, 20 SF 586, and any and all funds approved by the Director of Finance for this purpose, including future bonds if issued for this purpose. (RQS 0103, RLA 2019-33)

Section 17. 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  
5-13-19

FOR: Director Spronz

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READ FIRST TIME on MAY 13, 2019  
and referred to DIRECTORS of Capital Projects,  
City Planning Commission, Finance, Law;  
COMMITTEES on Municipal Services and Properties, Finance

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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REPORT  
after second Reading

PASSAGE RECOMMENDED BY  
COMMITTEE ON  
MUNICIPAL SERVICES  
AND PROPERTIES

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY  
COMMITTEE ON  
FINANCE

FILED WITH COMMITTEE