

Ordinance No. 631-2019

Council Members: McCormack, 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 to rehabilitate the Center Swing Bridge over the Cuyahoga River; to cause payment to ODOT for the City's share; to authorize the Mayor to apply to the District One Public Works Integrating Committee for state funding; authorizing one or more contracts for the design and other relative agreements; accepting gifts and grants from any public or private entity; to apply and accept funds from Ohio Public Works Commission; to authorize the Division of Purchasing and Supplies to acquire, accept, and record all land necessary to make 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 rehabilitation of the Center Swing Bridge (SFN 1869345) over the Cuyahoga River, PID 109597 (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 \$1,193,728, 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. Also, 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 provisions herein.

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 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 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 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 one or more agreements with private utility companies to pay charges for the installation of underground lines in connection with the Improvement.

Section 13. That the Director of Capital Projects 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.

Section 16. That the Mayor is authorized to apply to the District One Public Works Integrating Committee for state funding for the Improvement.

Section 17. That the Mayor is authorized to apply to the District One Public Works Integrating Committee for state funding to obtain credit enhancements and loan assistance in support of the city's bonds issued for bridge and road improvements.

Section 18. That the Mayor is authorized to accept one or more grants from the Ohio Public Works Commission, acting by and through its Director, and to apply for and accept grants or other funding from other public or private entities, to finance the Improvement; that the Mayor is authorized to file all papers and execute all documents necessary to receive the funds under the grant or loan, or combination; and that the funds are appropriated for the purposes described in this ordinance.

Section 19. 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 20. 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 21. That, provided the City sells future bonds authorized for the purposes of this ordinance, the City of Cleveland is obligated to provide cash matching funds in the amount of the local share.

Section 22. That, provided the City sells future bonds authorized for the purposes of this ordinance, 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 design, engineering and construction services necessary for 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 23. That the Director of Capital Projects is authorized to accept cash contributions from public or private entities, NEORSD, and GCRTA for infrastructure restoration costs associated with relocating, rehabilitating or reconstructing utility infrastructure for the Improvement and costs associated with implementing green infrastructure features to address combined sewer overflows. That the Director of Capital Projects is authorized to enter into agreements with the entities for this purpose.

Section 24. 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 25. 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 all land necessary in making of the public improvement, including but not limited to fee simple acquisitions, temporary easements, permanent easements, and work agreements necessary to make the Improvement. The consideration to be paid for the property and easements shall not exceed fair market value to be determined by the Board of Control.

Section 26. 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 27. That the Mayor or Director of Capital Projects is authorized to file all papers and execute all documents necessary to receive the funds under this ordinance; and that the funds are appropriated for the purposes described in the ordinance.

Section 28. That the cost of the professional services and the City's share of the improvement shall be paid 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 and 20 SF 586

and any all funds approved by the Director of Finance, including future bond funds if issued for this purpose, RQS 0103, RLA 2019-31.

Section 29. 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 June 3, 2019.

Effective June 5, 2019.