

Ordinance No. 1426-2019

AN EMERGENCY ORDINANCE

**Council Member(s) Johnson, Brancatelli
and Kelley (by departmental request)**

Giving consent of the City of Cleveland to the Director of Transportation of the State of Ohio to construct pedestrian enhancements known as Main Avenue Connector; to apply for and accept any gifts or grants from any public or private entity; authorizing the Director of Capital Projects to enter into any relative agreements; authorize the Division of Purchasing and Supplies to acquire and accept land necessary for the improvement; 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: the pedestrian pocket park at Main Avenue and West 9th Street, PID 111396 (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 City's share of the cost is estimated in the amount of \$187,000, 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. 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

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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 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

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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 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 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.

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Section 12. 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 if 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 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 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 cost of the professional services and the City's share of the Improvement shall be paid from Fund Nos. 20 SF 568, 20 SF 574, 20 SF 579, 20 SF 586, 20 SF 592, and any and all funds approved by the Director of Finance, including future bond funds, if issued for this purpose. (RQS 0103, RLA 2019-63)

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
11-18-19

FOR: Director Spronz

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REPORTS

READ FIRST TIME ON November 18, 2019

And referred to DIRECTORS of Capital Projects, City Planning Commission, Finance, Law; COMMITTEES on Municipal Services and Properties, Development Planning and Sustainability, Finance

CITY CLERK

READ SECOND TIME

by the council _____

CITY CLERK

READ THIRD TIME

by the council _____

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. _____ Page _____

Published in the City Record _____

PASSAGE RECOMMENDED BY
COMMITTEE ON
MUNICIPAL SERVICES
AND PROPERTIES

FILED WITH COMMITTEE

REPORT
after second Reading

PASSAGE RECOMMENDED BY
COMMITTEE ON
DEVELOPMENT, PLANNING AND
SUSTAINABILITY

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE

FILED WITH COMMITTEE

