

Proposed: 11/07/22

ORDINANCE NO. 164-2022(MSES), *First Reading*

By: Mayor Seren

An Ordinance authorizing the Mayor to enter into an agreement with, and requesting the cooperative of, the County of Cuyahoga, Ohio (“COUNTY”), in the matter of the Resurfacing of Warrensville Center Road from Mayfield Road to the South Corporation Line in the City of Cleveland Heights (“MUNICIPALITY”); and declaring the necessity that this legislation become immediately effective as an emergency measure.

**WHEREAS**, the MUNICIPALITY has recognized the need for and proposes the improvement of a portion of public highway which is described as follows:

The Resurfacing of Warrensville Center Road from Mayfield Road to the South Corporation Limit in the City of Cleveland Heights (the “Project”).

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Cleveland Heights, Ohio, that:

**SECTION 1.** In consideration of the covenants and agreements herein contained to be performed by the parties hereto, it is mutually agreed between the parties hereto as follows:

**A. CONSENT**

1. That it is declared to be in the public interest that the consent of said MUNICIPALITY be and such consent is hereby given to the COUNTY to participate in the cost of construction of the Project.

**B. COOPERATION**

1. That the COUNTY and the MUNICIPALITY will cooperate in the Project.
2. That the MUNICIPALITY will prepare construction plans and specifications, including necessary engineering reports, which shall conform to generally accepted engineering practices and principles.
3. That the MUNICIPALITY will arrange for the supervision and administration of the construction contract.
4. That the COUNTY will review the construction plans, estimate, specifications and bid proposal for conformance with section B-2 of this Agreement. County approval of these documents are required prior to the advertisement of the construction contract. The COUNTY will make an inspection of the completed Project.

5. That the MUNICIPALITY shall agree to provide the COUNTY with a complete set of as-built plans upon the completion of the Project.

**C. FUNDING**

1. MUNICIPALITY hereby agrees to participate with the COUNTY in the cost of the Project by using an allocation from the County Motor Vehicle License Tax Fund to pay the COUNTY's portion of the project.
2. That the COUNTY shall contribute fifty percent (50%) of the actual cost of construction and construction engineering which is determined to be eligible by the Cuyahoga County Engineer's policies up to a maximum of \$250,000.00.
3. In the event MUNICIPALITY secures additional funding for the Project, County's financial contribution and the supplemental funding cannot exceed the total actual cost of the Project.
4. The anticipated construction cost for this project is \$623,657.23. To determine funding eligibility, the COUNTY shall be notified immediately of any significant changes to the scope of work and/or construction cost.

**D. MAINTENANCE**

That upon completion of said resurfacing, said MUNICIPALITY will thereafter keep said highway open to traffic at all times; and

1. Maintain the resurfacing in accordance with the provisions of the statutes relating thereto and make ample financial provisions for such maintenance; and
2. Maintain the right-of-way and keep it free of obstructions in a manner satisfactory to the COUNTY and hold said right-of-way inviolate for public highway purposes and permit no signs, posters, billboards, roadside stands or other private installations within the right-of-way limits; and
3. That the COUNTY shall continue to maintain the structural elements of any bridge (defined as a structure with a span of twenty feet or greater) located within the limits of the Project in accordance with the applicable sections of the Ohio Revised Code.
4. After construction of the project is complete, the Municipality agrees to follow and maintain post-construction Best Management Practices as outlined in the Municipal Storm Water Permit that is filed with the Ohio Environmental Protection Agency (O.E.P.A.).

**E. TRAFFIC**

1. That upon completion of the Project, MUNICIPALITY will thereafter keep said highway open to traffic at all times; and
2. Place and maintain all traffic control devices conforming to the Ohio Manual of Uniform Traffic Control Devices on the Project in compliance with the provisions of Section 4511.11 and related sections of the Ohio Revised Code; and
3. That the street or highway shall be and hereby is designated a through highway as provided in Section 4511.07(A)(6) Ohio Revised Code; and
4. Stop signs affecting the movement of traffic on said street or highway within the roadway being improved shall be removed, and no stop signs shall be erected on same except at its intersection with another through highway where traffic does not warrant the installation of a traffic control signal but where the warrants for a “Four-way Stop” as provided in the aforesaid Manual are met; and
5. That no rule or regulation shall be enacted restricting the use of the improved road and/or structure by any class of vehicle or vehicle load permitted by the Ohio Revised Code to use a public highway. Any existing rule or regulation so restricting road usage shall be rescinded; and
6. The MUNICIPALITY shall prohibit parking in accordance with Section 4511.66 of the Ohio Revised Code unless otherwise controlled by local ordinance or resolution.

**F. RIGHT-OF-WAY**

1. That all existing street and public right-of-way within the MUNICIPALITY which is necessary for the Project shall be made available therefore.
2. That the MUNICIPALITY will arrange for the acquisition of any additional right-of-way which may be required for the construction of the Project.

**G. UTILITIES**

1. That the MUNICIPALITY will make arrangements with and obtain agreements from privately owned public utility companies whose lines or structures will be affected by the Project, and said companies have agreed to make any and all necessary arrangements in such a manner as to be clear of any construction called for by the plans of Project, and said companies have agreed to make such necessary arrangements immediately after notification by said MUNICIPALITY.
2. That the COUNTY will participate in the cost of alterations of governmentally-owned utility facilities which come within the provisions of Section 8301 (Utility

Reimbursement Eligibility) of the Ohio Department of Transportation's Real Estate Policies and Procedures Manual to the same extent that it participates in the other costs of the project, provided, however, that such participation will not extend to any additions or betterments of existing facilities.

3. That it is hereby agreed that the MUNICIPALITY shall, at its own expense, make all rearrangements of governmentally-owned utilities and/or appurtenances thereto which do not comply with the Provisions of Section 8301 (Utility Reimbursement Eligibility) of the Ohio Department of Transportation's Real Estate Policies and Procedures Manual, whether inside or outside the corporate limits, as may be necessary to conform to the Project.
4. That the construction, reconstruction, and/or arrangement of all utilities shall be done in such a manner as not to interfere unduly with the operation of the contractor constructing the Project, and all backfilling of trenches made necessary by such utility rearrangements shall be performed in accordance with the provision of the Ohio Department of Transportation Construction and Material Specifications.

#### **H. MISCELLANEOUS**

1. That if the MUNICIPALITY includes the construction of sanitary sewers, waterlines, area sewers (drainage of area surrounding the Project), alternate bid items, or other items in the Project that are in addition to those now existing and not provided for elsewhere in this Agreement, the MUNICIPALITY agrees to pay, or make arrangements for the payment of, the cost of said additional construction, the cost of preliminary and design engineering and construction supervision.
2. That the MUNICIPALITY shall be solely responsible for the certifications or obligations made or agreed to in Sections F-1, F-2, G-1, G-3, and G-4, and hereby agrees that the COUNTY shall be and is hereby released from any and all damages or claims of the MUNICIPALITY arising from or growing out of the certification or obligations made or agreed to in said Sections F-1, F-2, G-1, G-3, and G-4 hereinabove.
3. For matters relating to this Project, the agent for the COUNTY and liaison officer on the matter contained herein shall be the County Engineer of Cuyahoga County, Ohio, and/or such members of his staff as he may designate.
4. MUNICIPALITY agrees to make all pertinent contractual books and records and other documents pertaining to the Project available to the COUNTY and its designated agents for purpose of audit and examination upon reasonable request.
5. By enacting this Ordinance, the MUNICIPALITY agrees to conduct this transaction by electronic means and agrees that all documents requiring County signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The MUNICIPALITY also agrees on behalf of the aforementioned entities and persons to be bound by the provisions of Chapters 304 and

1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

**I. AUTHORITY TO SIGN**

1. That the Mayor of said MUNICIPALITY is hereby empowered and directed on behalf of the MUNICIPALITY to enter into agreements with the COUNTY necessary to complete the planning and construction of this improvement.
2. That the Mayor of said MUNICIPALITY is hereby empowered and directed on behalf of the MUNICIPALITY to make application to the County of Cuyahoga, Ohio, for approval to use County Motor Vehicle License Tax Funds for the improvement.

**SECTION 2.** Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation of the City of Cleveland Heights.

**SECTION 3.** It is necessary that this Ordinance become immediately effective as an emergency measure necessary as for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency by reason of the need for expediting highway improvement to promote highway safety. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance 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.

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MELODY JOY HART  
President of Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

Approved: \_\_\_\_\_

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KAHLIL SEREN  
Mayor

**CERTIFICATE OF COPY**

**State of Ohio** )  
**County of Cuyahoga** )  
**City of Cleveland Heights** )

I, Addie Balester, as Clerk of the City of Cleveland Heights Ohio, do hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the legislative Authority of the said municipality on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 that the publication of such Ordinance has been made certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance Record No. \_\_\_\_\_, Page \_\_\_\_\_.

**IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

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**Clerk, City of Cleveland Heights, Ohio**

**MUNICIPAL SEAL**