



## Legislation Text

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**File #:** 0979-2005, **Version:** 1

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**Background:** This ordinance provides for ongoing progress in the City's efforts to restore the Short North Arches to operational condition and recover monetary damages sustained as a result of the erroneous design and/or installation of this system. This effort requires one new contract and two modifications of existing contracts.

Subsequent to failure of the original arch lighting system, Ralph and Curl Engineering, contract compliance number #31-1067613 (expires January 22, 2007), was retained to examine the original design/installation, diagnose deficiencies and identify corrective options. They were selected in accordance with City Code Chapter 329 that governs professional service contracts. Their original contract in the amount of \$87,260.00 was authorized by Ordinance 0118-2004 and passed by City Council February 2, 2004. This contract was modified and increased by \$74,021.16 by Ordinance 2040-2004 and passed by Council November 22, 2004.

Electrical power for the Short North Arches is currently provided by the City's street lighting system. Ralph and Curl recommend that the arches have an independent power source. A contract modification in the amount of \$49,354.00 is required to design this new electrical system. The hourly rate, overhead rate and percentage of profit that were negotiated at the beginning of this project were used to determine the amount of this modification. Ralph and Curl's total revised contract amount (including this modification) will be \$210,635.16.

Litigation efforts are underway to protect the City's interests and that of the Short North Special Improvement District (SID). Lighting Technologies and Services, Incorporated, contract compliance number #47-0907300 (registration pending), an independent consulting firm providing expert investigation, testing, analysis and inspection of lighting product design, application and failure, was retained to represent the City and SID in court. This firm was also selected in accordance with City Code Chapter 329 that governs professional service contracts. Their original contract [with the City Attorney's Office] in the amount of \$25,000.00 was authorized by Ordinance 0034-2004 and passed by City Council January 12, 2004. A contract modification in the amount of \$15,000.00 is required to keep them on retainer as an expert witness for this case. Lighting Technologies' total revised contract amount (including this modification) will be \$40,000.00.

These modifications are an addition to the original scopes of services, but are a continuation of the existing work being performed and it would not be practical to contract with different consultants.

This ordinance also authorizes the City Attorney to enter into a new contract with Consolidated Consultants Company in the amount of \$7,500.00 for the Transportation Division for professional engineering services. Another expert witness is needed to provide additional testimony in pending litigation that deals with professional negligence. J. Norman Stark of Consolidated is an Ohio-registered architect with extensive construction litigation experience and is qualified to represent the City's and SID's interest in a court of law. Consolidated Consultants Company's contract compliance number is 33-0948648 (registration pending). The City Attorney's Office has encumbered \$2,500.00 of its own funds for this purpose. This legislation will authorize an expense correction for the City Attorney's expenditure so that the total contract authorization for Consolidated Consultants Company between the City Attorney's previous activity and this ordinance is \$10,000.00.

The selection process for this contract has been waived in accordance with provisions of Chapter 329.11 of the City Code.

**Fiscal Impact:** The total cost of these contract modifications and the new contract is \$74,454.00. This sum is available within the Development Department's Development Limited Bond Fund in three separate projects. This ordinance transfers these monies to the Short North Special Improvement District Fund where it is appropriated and authorized for expenditure.

**Emergency action** is requested for immediate modification of the design contracts so that Short North Arch-related work and contract-related litigation may proceed without delay.

To authorize the City Auditor to transfer \$74,354.00 within and from the Development Limited Bond Fund to the Short North Special

Improvement District Fund; to appropriate \$74,354.00 within the Short North Special Improvement District Fund; to authorize the Public Service Director to modify and increase an existing contract with Ralph and Curl Engineers by \$49,354.00; to authorize the City Attorney to modify and increase an existing contract with Lighting Technologies and Services, Incorporated, by \$15,000.00; to authorize the City Attorney to enter into a \$7,500.00 contract with Consolidated Consultants Company; to authorize the City Auditor to effect a \$2,500.00 expense correction for monies advanced from the City Attorney's Office for this purpose, all for the Short North Arches project; to authorize the expenditure of \$74,354.00 from the Short North Special Improvement District Fund, and to declare an emergency. (\$74,354.00)

**WHEREAS**, contract EL004082 with Ralph and Curl Engineering for the Short North Arches project was authorized by Ordinance 0118-2004, passed February 2, 2004 and executed and approved by the City Attorney on February 13, 2004; and

**WHEREAS**, it is necessary to modify and increase this contract by \$49,354.00 per the consultant's letter dated January 13, 2005; and

**WHEREAS**, contract EL004082 with Lighting Technologies and Services, Incorporated for the Short North Arches project was authorized by Ordinance 0034-2004, passed January 12, 2004; and

**WHEREAS**, it is necessary for the City to modify and increase this contract by \$15,000.00 to continue the retention of expert witness James L. Rhiner, Vice President, in the pending litigation against the responsible parties for the initial failure of the fiber optic lighting system; and

**WHEREAS**, it is further necessary to obtain additional expert testimony in the person of J. Norman Stark of Consolidated Consultants Company in the pending litigation on the issue of professional design negligence in order to properly prosecute the claims of the City and the Short North Special Improvement District (SID); and

**WHEREAS**, the City Attorney seeks authorization to engage the services of Consolidated Consultants Company; and

**WHEREAS**, an emergency exists in the usual daily operation of the Public Service Department, Transportation Division, in it is immediately necessary that two contracts be modified and increased and a third contract be entered so that Short North Arch-related work and contract-related litigation may proceed without delay, thereby preserving the public health, peace, property, safety and welfare; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**SECTION 1.** That the City Auditor be and hereby is authorized to transfer \$74,354.00 within Fund 742, the Development Limited Bond Fund, Department No. 44-01, Development Department, as follows:

**TRANSFER FROM:**

**Fund / Project # / Project / O.L. 01/O.L. 03 Codes / OCA Code / Amount**

742 / 670518 / Long Street Neighborhood Commercial Revitalization / 06/6600 / 643106 / \$45,667.37  
742 / 440017 / Short North / Neighborhood Commercial Revitalization / 06/6600 / 643106 / \$703.72  
742 / 440085 / North Market Neighborhood Commercial Revitalization / 06/6600 / 643106 / \$27,982.91

Total transfer from: \$74,354.00

**TRANSFER TO:**

**Fund / Project # / Project / O.L. 01/O.L. 03 Codes / OCA Code**

742 / 670518 / Long Street Neighborhood Commercial Revitalization / 10/5501 / 643106 / \$45,667.37  
742 / 440017 / Short North / Neighborhood Commercial Revitalization / 10/5501 / 643106 / \$703.72  
742 / 440085 / North Market Neighborhood Commercial Revitalization / 10/5501 / 643106 / \$27,982.91

Total transfer to: \$74,354.00

**SECTION 2.** That the City Auditor be and hereby is authorized to transfer \$74,354.00 between Funds as follows:

**TRANSFER FROM:**

**Fund / Project # / Project / O.L. 01/O.L. 03 Codes / OCA Code**

742 / 670518 / Long Street Neighborhood Commercial Revitalization / 10/5501 / 643106 / \$45,667.37

742 / 440017 / Short North / Neighborhood Commercial Revitalization / 10/5501 / 643106 / \$703.72

742 / 440085 / North Market Neighborhood Commercial Revitalization / 10/5501 / 643106 / \$27,982.91

Total transfer from: \$74,354.00

**TRANSFER TO:**

**Fund / Project# / Project / O.L. 01/O.L. 03 Codes / OCA Code**

716 / 471841 / Short North Arches / 80/0886 / 471841

Total transfer to: \$74,354.00

**SECTION 3.** That the sum of \$74,354.00 be and hereby is appropriated from the unappropriated balance of Fund 716, the Short North Special Improvement District Fund, and from all monies estimated to come into said fund from any and all sources and unappropriated for any other purpose during the fiscal year ending December 31, 2005, to Department No. 44-01, Development Department, Object Level One Code 06, Object Level Three Code 6682, OCA Code 471841 and Project 471841.

**SECTION 4.** That the monies appropriated within the foregoing Section 3 shall be paid upon order of the Public Service Director and/or the City Attorney as appropriate and that no order shall be drawn or money paid except by voucher, the form of which shall be approved by the City Auditor.

**SECTION 5.** That the Public Service Director be and is hereby authorized to modify and increase contract EL004082 with Ralph and Curl Engineers to obtain permits and complete the design and construction plans for the Short North Arches project in accordance with the plans on file in the office of the Public Service Director at a cost not to exceed \$49,354.00.

**SECTION 6.** That the City Attorney be and is hereby authorized to modify and increase contract EL004082 with Lighting System Technologies, Incorporated, to continue their retention as an expert witness for the Short North Arches project at a cost not to exceed \$15,000.00.

**SECTION 7.** That the City Attorney be and hereby is authorized to enter into a contract with Consolidated Consultants Company to provide expert testimony in legal proceedings related to the Short North Arches project in an amount not to exceed \$7,500.00.

**SECTION 8.** That the City Auditor be and hereby is authorized to effect an expense correction to the extent that the City Attorney's Office has fronted costs related to the action proposed within Section 7 of this ordinance from Fund 010, the General Fund, Department No. 24-01, City Attorney's Office, Object Level One Code 03, Object Level Three Code 3336, OCA Code 240101 in the amount of \$2,500.00; this expense should instead be recorded per Section 9 of this ordinance.

**SECTION 9.** That for the purpose of paying the cost of said two contract modifications, one new contract and related expenses the sum of \$74,354.00, or so much thereof as may be necessary, be and hereby is authorized to be expended from Fund 716, the Short North Special Improvement District Fund, Department No. 44-01, Development Department, Object Level One Code 06, Object Level Three Code 6682, OCA Code 471841 and Project 471841.

**SECTION 10.** That for the reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.

