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3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 93 - 2012

6
7 AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC
8 SERVICE TO ENTER INTO A CONTRACT WITH THE OHIO
9 DEPARTMENT OF TRANSPORTATION FOR THE
10 IMPROVEMENT OF STATE ROAD BETWEEN GRAHAM AND
11 QUICK ROADS, AUTHORIZING THE DIRECTOR OF FINANCE
12 TO PAY THE CITY'S ESTIMATED SHARE OF THE COSTS
13 THEREFOR, AND DECLARING AN EMERGENCY.

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15 WHEREAS, pursuant to Ord. No. 137-2010, passed December 28, 2010, this Council
16 authorized the Director of Public Service to cooperate with the Ohio Department of
17 Transportation ("ODOT") in the design and reconstruction of State Road between Bath and
18 Steels Corners Road, and authorized the City's financial participation in such design and
19 reconstruction; and

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21 WHEREAS, in cooperation with ODOT, the project termini have been extended southerly
22 to Graham Road and northerly to Quick Road; and

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24 WHEREAS, the improvement will include widening and reconstruction of 2.32 miles of
25 State Road between Graham and Quick Roads; the reconstruction and upgrade signalization
26 of the Bath Road; the Ascot Parkway and the Steels Corners Road intersections, including
27 new curb, walks, on-street bike lanes, resurfacing, drainage, signing and pavement
28 markings, lying within the City of Cuyahoga Falls (hereinafter the "Improvement"); and

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30 WHEREAS, it is understood that the City will cooperate with the Director of
31 Transportation by agreeing to assume and bear one hundred percent (100%) of the entire
32 cost of the Improvement, less the amount of Federal-aid Earmarks and AMATS funds set
33 aside by the ODOT Director of Transportation for the financing of this improvement from
34 funds allocated by the Federal Highway Administration, U.S. Department of Transportation,
35 and further, the City will agree to assume and bear one hundred percent (100%) of the cost
36 of Right-of-Way, excluding in-house Right-of-Way charges incurred by the State; and

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38 WHEREAS, the City's share of the cost of the Improvement is now estimated in the
39 amount of One Million Five Hundred Ninety Five Thousand Three Hundred Seventy and
40 00/100 Dollars, (\$1,595,370.00), but said estimated amount is to be adjusted in order that
41 the City's ultimate share of said improvement shall correspond with said percentages of
42 actual costs when said actual costs are determined; and

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44 WHEREAS, the estimated cost of the City's share of the cost of the Improvement has
45 previously been appropriated for this purpose in the City's Capital Projects Fund; and

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47 WHEREAS, The ODOT Director of Transportation has approved said legislation proposing
48 cooperation and has caused to be made plans and specifications and an estimate of cost and
49 expense for improving the above described highway and has transmitted copies of the same
50 to this Council; and

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52 WHEREAS, this Council desires the ODOT Director of Transportation to proceed with the
53 aforesaid highway improvement,

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55 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
56 Falls, County of Summit and State of Ohio, that:

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Section 1. The Director of Public Service is authorized to enter into contract with the State of Ohio, Department of Transportation, on the basis of the draft contract now on file with the Clerk of Council in Council File No. _____, for the improvement of State Road between Graham and Quick Roads as described herein, which contract provides for the payment by the City of the amount of money set forth hereinafter for supporting construction of the Improvement.

Section 2. The Director of Finance is authorized to pay the sum of One Million Five Hundred Ninety Five Thousand Three Hundred Seventy and 00/100 Dollars (\$1,595,370.00) to the State Treasurer or pursuant to escrow agreement with the State of Ohio to pay the City's estimated share of the cost of the Improvement. Said payment shall be made from the Capital Projects Fund.

Section 3. This Council requests the ODOT Director of Transportation to proceed with the aforesaid highway Improvement, with the understanding that under the contract authorized in Section 1 above, the City is committed to pay the full cost of the Improvement over and above the amount to be paid from Federal funds.

Section 4. The Clerk of Council is hereby directed to transmit to the Director of Transportation a certified copy of this Ordinance.

Section 5. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, to the extent applicable, including Chapter 107 of the Codified Ordinances.

Section 6. This resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga Falls and the inhabitants thereof, and provided it received the affirmative vote of two-thirds of the members elected or appointed 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 at the earliest period allowed by law.

Passed: 10-22-12

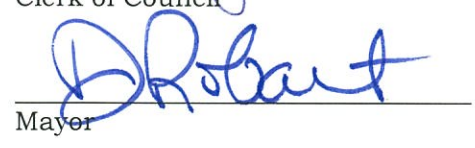


President of Council



Clerk of Council

Approved: 10/23/12



Mayor

C O N T R A C T
(Chapter 5521, Ohio Revised Code)

This contract is made by and between the State of Ohio, Department of Transportation, acting through its director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and the City of **Cuyahoga Falls**, (hereinafter referred to as the legislative authority/Local Public Agency or "LPA").

WITNESSTH:

WHEREAS, Chapter 5521 of the Ohio Revised Code provides that the legislative authority may cooperate with the STATE in a highway project made by and under the supervision of the Director of Transportation; and

WHEREAS, through the enactment of preliminary legislation, the LPA and the STATE have agreed to cooperate in the highway project described below; and

WHEREAS, through the enactment of final legislation, the LPA has committed to pay an estimated amount of money as its share of the total estimated cost and expense of the highway project described below; and

WHEREAS, the fiscal officer of the LPA has filed with the LPA a certificate stating that sufficient moneys are available, as required by Chapter 5521 and Section 5705.41 of the Ohio Revised Code. A duplicate certificate is attached hereto; and

WHEREAS, in accordance with the final legislation, the LPA hereby enters into this contract with the STATE to provide for payment of the agreed portion of the cost of the highway project and any additional obligations for the highway project described below.

NOW, THEREFORE, in consideration of the premises and the performances of mutual covenants hereinafter set forth, it is agreed by parties hereto as follows:

SECTION I: **RECITALS**

The foregoing recitals are hereby incorporated as a material part of this contract.

SECTION II: **PURPOSE**

The purpose of this contract is to set forth requirements associated with the highway project described below (hereinafter referred to as the "PROJECT") and to establish the responsibilities for the administration of the PROJECT by the LPA and the STATE.

SECTION III: LEGAL REFERENCES

This contract is established pursuant to Chapter 5521 of the Ohio Revised Code.

SECTION IV: SCOPE OF WORK

The work to be performed under this contract shall consist of the following:

The improvement will include widening and reconstruction of 2.32 miles of State Road; the reconstruction and upgrade signalization of the Bath Road; the Ascot Parkway and the Steels Corners Road intersections, including new curb, walks, on-street bike lanes, resurfacing, drainage, signing and pavement markings, lying within the City of Cuyahoga Falls.

SECTION V: FINANCIAL PARTICIPATION

1. The STATE agrees to provide the necessary funds as enumerated in this section and allowed by law for the financing of this project.
2. The STATE may allocate the money contributed by the LPA in whatever manner it deems necessary in financing the cost of construction, right-of-way, engineering, and incidental expenses, notwithstanding the percentage basis of contribution by the LPA.
3. The total cost and expenses for the project are only an estimate and the total cost and expenses may be adjusted by the STATE. If any adjustments are required, payment of additional funds shall correspond with the percentages of actual costs when said actual costs are determined, and as requested, by the Director of Transportation.
4. The LPA agrees to pay to the STATE its share of the total estimated cost expense for the above highway project in the amount of **One Million Eight Hundred Three Hundred Ninety Four and - - - - 00/100 Dollars, (\$1,800,394.00).**
5. The City agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement, less the amount of Federal-aid Earmarks and AMATS funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U.S. Department of Transportation, and further, the City agrees to assume and bear one hundred percent (100%) of the cost of Right-of-Way, excluding in-house Right-of-Way charges incurred by the State.
6. The LPA agrees to assume and bear One Hundred Percent (100%) of the cost of any construction items required by the LPA on the entire project, which are not necessary for the improvement, as determined by the State and Federal Highway Administration.

7. The LPA agrees that change orders and extra work contracts required fulfilling 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 LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

SECTION VI: RIGHT-OF-WAY AND UTILITIES

1. The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.
2. The LPA agrees that all utility accommodation, relocation, and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual, including that:
 - A. Arrangements have been or will be made with all utilities where facilities are affected by the described PROJECT, that the utilities have agreed to make all necessary removals and/or relocations to clear any construction called for by the plans of this PROJECT, and that the utilities have agreed to make the necessary removals and/or relocations after notification by the LPA or STATE.
 - B. The LPA shall, at its own expense, make all removals and/or relocations of publicly-owned utilities which do not comply with the reimbursement provisions of the ODOT Utilities Manual. Publicly-owned facilities which do comply with the reimbursement provisions of the ODOT Utilities Manual will be removed and/or relocated at project expense, exclusive of betterments.
 - C. The removals and/or relocation of all utilities shall be done in such a manner as not to interfere with the operation of the contractor constructing the PROJECT and that the utility removals and/or relocations shall be approved by the STATE and performed in accordance with the provisions of the ODOT Construction and Materials Specifications.

SECTION VII: ADDITIONAL PROJECT OBLIGATIONS

1. The STATE shall initiate the competitive bid letting process and award the PROJECT in accordance with ODOT's policies and procedures.
2. The LPA agrees:
 - A. To keep said highway open to traffic at all times;
 - B. To maintain the PROJECT in accordance with the provisions of the statutes relating thereto,

- C. To make ample financial and other provisions for such maintenance of the PROJECT after its completion;
- D. To maintain the right-of-way and keep it free of obstructions in a manner satisfactory to the STATE and hold said right-of-way inviolate for public highway purposes;
- E. To place and maintain all traffic control devices conforming to the Ohio Manual on Uniform Traffic Control Devices on the project in compliance with the provisions of Section 4511.11 of the Ohio Revised Code;
- F. To regulate parking in accordance with Section 4511.66 of the Ohio Revised Code, unless otherwise controlled by local ordinance or resolution.

SECTION VIII: DISPUTES

In the event that any disputes arise between the STATE and LPA concerning interruption of or performance pursuant to this contract, such disputes shall be resolved solely and finally by the Director of Transportation.

SECTION IX: NOTICE

Notice under this contract shall be directed as follows

City of Cuyahoga Falls
2310 Second Street
Cuyahoga Falls, Ohio
44221

Ohio Department of Transportation
Office of Estimating
1980 West Broad Street, 1st Floor
Columbus, Ohio 43223

SECTION X: FEDERAL REQUIREMENTS

1. In carrying out this contract, LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. LPA will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
2. To the extent necessary under Ohio law, LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. LPA will, in all solicitations or advertisements for employees placed by or on behalf of LPA, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, or age. If applicable, the LPA shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

3. LPA agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. LPA shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

SECTION XI: GENERAL PROVISIONS

1. This contract constitutes the entire contract between the parties. All prior discussions and understandings between the parties are superseded by this contract.
2. Neither this contract nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
3. Any change to the provisions of this contract must be made in a written amendment executed by both parties.
4. This contract and any claims arising out of this contract shall be governed by the laws of the State of Ohio. Any provision of this contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this contract or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that the STATE is a party to any litigation arising out of or relating in any way to this contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
5. All financial obligations of the State of Ohio, as provided in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the STATE. Additionally, it is understood that this financial obligation of the LPA shall not be valid and enforceable unless funds are appropriated by the LPA's legislative body.
6. This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
7. LPA agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

SECTION XI: SIGNATURES

Any person executing this contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this contract on such principal behalf.

IN WITNESS THEREOF, the parties hereto have caused this contract to be duly executed in duplicate.

SEAL
(If Applicable)

**OHIO DEPARTMENT OF
TRANSPORTATION**

**LOCAL PUBLIC AGENCY
City of Cuyahoga Falls**

Director of Transportation

Director of Public Service

Date

Date

Approved:
Mike DeWine
Attorney General of Ohio

By: _____
Stephen H. Johnson
Chief, Transportation Section

Date: _____