

**NEW LEGISLATION**

February 8, 2016

<b>Temp. No.</b>	<b>Introduced</b>	<b>Committee</b>	<b>Description</b>
A-7	2/8/16	Fin	An ordinance authorizing the Director of Public Service to enter into a cooperative procurement agreement with the North Central Service Cooperative dba National Joint Powers Alliance (“NJPA”), waiving competitive bidding for the purchase of products, services, materials and supplies purchased through cooperative purchase agreements administered by NJPA, and declaring an emergency.
A-8	2/8/16	Fin	An ordinance authorizing the Director of Public Service to enter into a contract or contracts for the purchase of one R70C Rotary Lift including installation, and declaring an emergency.
A-9	2/8/16	PA	An ordinance amending various sections of the Codified Ordinances to conform to State law, approving the 2015 replacement pages to the Codified Ordinances of the City of Cuyahoga Falls, and declaring an emergency.
A-10	2/8/16	PA	An ordinance amending the Traffic Control File by providing for installation of various traffic control devices, and declaring an emergency.
A-11	2/8/16	PA	An ordinance authorizing the Mayor to enter into an agreement with the State of Ohio, Ohio Rail Development Commission for implementation of a railroad safety preemption project, and declaring an emergency.

## CALENDAR

February 8, 2016

The following legislation will be up for passage at the Council Meeting on February 8, 2016.

<b>Temp. No.</b>	<b>Introduced</b>	<b>Committee</b>	<b>Description</b>
A-6	1/25/16	Fin	An ordinance establishing pay ranges for part-time, per diem, and special classification workers, and declaring an emergency.

**PENDING LEGISLATION**

February 8, 2016

<b>Temp. No.</b>	<b>Introduced</b>	<b>Committee</b>	<b>Description</b>
B-76	9/14/15	CD	An ordinance authorizing the Director of Community Development to enter into a Community Reinvestment Area Tax Exemption Agreement with North Falls Reserve – Buckeye Urban, LLC., and declaring an emergency.
A-6	1/25/16	Fin	An ordinance establishing pay ranges for part-time, per diem, and special classification workers, and declaring an emergency.

2  
3 CITY OF CUYAHOGA FALLS, OHIO

4  
5 ORDINANCE NO. - 2016

6  
7 AN ORDINANCE AUTHORIZING THE DIRECTOR OF  
8 PUBLIC SERVICE TO ENTER INTO A COOPERATIVE  
9 PROCUREMENT AGREEMENT WITH THE NORTH  
10 CENTRAL SERVICE COOPERATIVE dba NATIONAL  
11 JOINT POWERS ALLIANCE (“NJPA”), WAIVING  
12 COMPETITIVE BIDDING FOR THE PURCHASE OF  
13 PRODUCTS, SERVICES, MATERIALS AND SUPPLIES  
14 PURCHASED THROUGH COOPERATIVE PURCHASE  
15 AGREEMENTS ADMINISTERED BY NJPA, AND  
16 DECLARING AN EMERGENCY.  
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19 WHEREAS, Section 2 of the City Charter, adopted pursuant to Art. XVIII,  
20 Sections 3 and 7 of the Ohio Constitution, authorizes this Council to make exception  
21 to the competitive bidding procedures set forth in the Revised Code,  
22

23 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga  
24 Falls, County of Summit and State of Ohio, that:  
25

26 Section 1. Notwithstanding and as an exception to the competitive bidding  
27 requirements set forth in Title 7 and elsewhere in the Ohio Revised Code, the  
28 Director of Public Service is authorized to enter into a contract with the North  
29 Central Service Cooperative dba National Joint Powers Alliance (“NJPA”), a political  
30 subdivision of the State of Minnesota, for the purpose of establishing membership in  
31 NJPA, and for the further purpose of purchasing products, services, materials and  
32 supplies through cooperative purchase agreements administered by NJPA.  
33 Competitive bidding requirements which would otherwise be associated with such  
34 purchases are hereby waived.  
35

36 Section 2. Any other ordinances and resolutions or portions of ordinances and  
37 resolutions inconsistent herewith are hereby repealed, but any ordinances and  
38 resolutions or portions of ordinances and resolutions not inconsistent herewith and  
39 which have not previously been repealed are hereby ratified and confirmed.  
40

41 Section 3. It is found and determined that all formal actions of this Council  
42 concerning and relating to the passage of this ordinance were taken in an open  
43 meeting of this Council and that all deliberations of this Council and of any  
44 committees that resulted in those formal actions were in meetings open to the  
45 public, in compliance with all legal requirements including Chapter 107 of the  
46 Codified Ordinances.  
47

48        Section 4. This ordinance is hereby declared to be an emergency measure  
49 necessary for the preservation of the public peace, health, safety, convenience and  
50 welfare of the City of Cuyahoga Falls and the inhabitants thereof, and provided it  
51 receives the affirmative vote of two-thirds of the members elected or appointed to  
52 Council, it shall take effect and be in force immediately upon its passage and  
53 approval by the Mayor; otherwise it shall take effect and be in force at the earliest  
54 period allowed by law.

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57 Passed: \_\_\_\_\_

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President of Council

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Clerk of Council

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65 Approved \_\_\_\_\_

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Mayor

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3 CITY OF CUYAHOGA FALLS, OHIO

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5 ORDINANCE NO. - 2016

6  
7 AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC  
8 SERVICE TO ENTER INTO A CONTRACT OR CONTRACTS FOR  
9 THE PURCHASE OF ONE R70C ROTARY LIFT INCLUDING  
10 INSTALLATION, AND DECLARING AN EMERGENCY.  
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12  
13 BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of Summit and State  
14 of Ohio, that:

15  
16 Section 1. The Director of Public Service is hereby authorized to enter into a contract or  
17 contracts for the purchase of one R70C Rotary Lift including installation through the NJPA bid or  
18 any other source having a price equal to or lower than that provided by the NJPA bid. Any  
19 requirement for competitive bidding is hereby suspended.  
20

21 Section 2. The Director of Finance is hereby authorized and directed to make payment for  
22 same from Capital Projects Fund, line item Capital Outlay.  
23

24 Section 3. Any other ordinances and resolutions or portions of ordinances and resolutions  
25 inconsistent herewith are hereby repealed, but any ordinances and resolutions or portions of  
26 ordinances and resolutions not inconsistent herewith and which have not previously been  
27 repealed are hereby ratified and confirmed.  
28

29 Section 4. It is found and determined that all formal actions of this Council concerning and  
30 relating to the adoption of this ordinance were adopted in an open meeting of this Council and  
31 that all deliberations of this Council and of any of its committees that resulted in such formal  
32 action were in meetings open to the public, in compliance with all legal requirements including  
33 Chapter 107 of the Codified Ordinances.  
34

35 Section 5. This ordinance is hereby declared to be an emergency measure necessary for the  
36 preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga  
37 Falls and the inhabitants thereof, and provided it receives the affirmative vote of two-thirds of the  
38 members elected or appointed to Council, it shall take effect and be in force immediately upon its  
39 passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest  
40 period allowed by law.  
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43 Passed: \_\_\_\_\_  
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45 President of Council

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48 Clerk of Council

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51 Approved: \_\_\_\_\_  
52 \_\_\_\_\_  
53 Mayor

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3 CITY OF CUYAHOGA FALLS, OHIO

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5 ORDINANCE NO. -2016

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7 AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE CODIFIED  
8 ORDINANCES TO CONFORM TO STATE LAW, APPROVING THE 2015  
9 REPLACEMENT PAGES TO THE CODIFIED ORDINANCES OF THE CITY  
10 OF CUYAHOGA FALLS, AND DECLARING AN EMERGENCY.

11  
12 WHEREAS, Article XVIII, Section 3 of the Ohio Constitution provides that municipalities shall have  
13 the authority to enforce local police, sanitary and other similar regulations as are not in conflict with  
14 general laws, and

15  
16 WHEREAS, certain provisions within the Codified Ordinances of the City of Cuyahoga Falls should be  
17 amended to conform to current State laws that have been amended, so as to avoid conflict in matters that  
18 are not subject to the City’s powers of local self-government; and

19  
20 WHEREAS, various ordinances and ordinance amendments of a general and permanent nature have  
21 been passed by this Council which should be included in the published Codified Ordinances; and

22  
23 WHEREAS, the City has heretofore entered into a contract with the Walter H. Drane Company to  
24 prepare and publish such revisions as are approved by this Council,

25  
26 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of  
27 Summit and State of Ohio, that:

28  
29 Section 1. The Ordinances of the City of Cuyahoga Falls, Ohio, of a general and permanent nature,  
30 as revised, recodified, rearranged and consolidated into component codes, titles, chapters and sections  
31 within the 2015 Replacement Pages to the Codified Ordinances, are hereby approved and adopted.

32  
33 Section 2. The following sections and chapters are hereby added, amended or repealed as  
34 respectively indicated in order to comply with current State law.

35  
36 Traffic Code

- 37
- 38 301.19 Motorcycle. (Amended)
- 39 331.48 Vehicular Operation on Street Closed Due to Rise in Water Level. (Added)
- 40 335.031 Driving With Probationary License; Curfew. (Amended)
- 41 335.072 Driving Under Financial Responsibility Law Suspension or Cancellation. (Amended)
- 42 335.074 Driving Under License Forfeiture or Child Support Suspension. (Amended)
- 43 335.09 Display of License Plates. (Amended)
- 44 335.10 Expired or Unlawful License Plates. (Amended)
- 45 341.01 Definitions. (Amended)
- 46 341.03 Prerequisites to Operation of a Commercial Vehicle. (Amended)
- 47 341.05 Criminal Offenses. (Amended)
- 48 341.06 Employment of Drivers of Commercial Vehicles. (Amended)
- 49 351.04 Parking Near Curb; Handicapped Parking. (Amended)
- 50 373.02 Riding Upon Seats; Handlebars; Helmets and Glasses. (Amended)

51  
52 General Offenses Code

- 53
- 54 501.07 Requirements For Criminal Liability. (Amended)
- 55 501.08 Culpable Mental States. (Amended)

56 529.07 Open Container Prohibited. (Amended)  
57 549.01 Weapons Definitions. (Amended)

58  
59

60 Section 3. The complete text of the sections listed above are set forth in full in the current  
61 replacement pages to the Codified Ordinances which are hereby attached to this ordinance as Exhibit A.  
62 The listing above of each new section by reference to its title shall constitute sufficient publication of new  
63 matter contained therein.

64

65 Section 4. It is found and determined that all formal actions of this Council concerning and relating  
66 to the adoption of this ordinance were adopted in an open meeting of this Council and that all  
67 deliberations of this Council and any of its committees that resulted in such formal action were in  
68 meetings open to the public, in compliance with all legal requirements including Chapter 107 of the  
69 Codified Ordinances.

70

71 Section 5. This ordinance is hereby declared to be an emergency measure necessary for the  
72 preservation of the public peace, health and safety of the Municipality and its inhabitants for the reason  
73 that there exists an imperative necessity for the earliest publication and distribution of current  
74 Replacement Pages to the officials and residents of the Municipality, so as to facilitate administration,  
75 daily operation and avoid practical and legal entanglements, and provided that it receives the affirmative  
76 vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force  
77 immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force at  
78 the earliest period allowed by law.

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81 Passed: \_\_\_\_\_

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President of Council

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Clerk of Council

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

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Mayor

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5 CITY OF CUYAHOGA FALLS, OHIO

6  
7 ORDINANCE NO. - 2016

8  
9 AN ORDINANCE AMENDING THE TRAFFIC  
10 CONTROL FILE BY PROVIDING FOR INSTALLATION  
11 OF VARIOUS TRAFFIC CONTROL DEVICES, AND  
12 DECLARING AN EMERGENCY.  
13

14 WHEREAS, site-specific traffic control regulations of the City are established  
15 and maintained in the "Traffic Control File," a document established and  
16 maintained by the Chief of Police pursuant to Chapter 305 of the Codified  
17 Ordinances, and  
18

19 WHEREAS, Section 305.02 of said Chapter requires that amendments to the  
20 Traffic Control File be made only through legislation passed by City Council.  
21

22 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of  
23 Cuyahoga Falls, County of Summit, and State of Ohio, that:  
24

25 Section 1. Upon the recommendation of the Traffic Committee, the Traffic  
26 Control File is hereby amended as follows:  
27

- 28 1. To prohibit parking on the north side of School Avenue between  
29 Newberry Street and Germaine Street.
- 30 2. To increase the length of the parking prohibition on the east side of  
31 Germaine Street to 200 feet south of Portage Trail.
- 32 3. To prohibit parking in the cul-de-sac on Ruth Avenue.  
33

34 Section 2. The Chief of Police is hereby authorized and directed to note in  
35 the Traffic Control File the proper legends.  
36

37 Section 3. The Mayor is hereby authorized and directed to cause the  
38 installation or removal of the proper signage reflecting the above amendments.  
39

40 Section 4. Any other ordinances and resolutions or portions of ordinances  
41 and resolutions inconsistent herewith are hereby repealed but any ordinances  
42 and resolutions or portions of ordinances and resolutions not inconsistent  
43 herewith and which have not been previously repealed are hereby ratified and  
44 confirmed.  
45

46 Section 5. It is found and determined that all formal actions of this Council  
47 concerning and relating to the adoption of this ordinance were adopted in an  
48 open meeting of this Council and that all deliberations of this Council and of  
49 any of its committees that resulted in such formal action were in meetings open

50 to the public, in compliance with all legal requirements including Chapter 107  
51 of the Codified Ordinances.

52  
53 Section 6. This ordinance is hereby declared to be an emergency measure  
54 necessary for the preservation of the public peace, health, safety, convenience  
55 and welfare of the City of Cuyahoga Falls and the inhabitants thereof and  
56 provided it receives the affirmative vote of two-thirds of the members elected or  
57 appointed to Council, it shall take effect and be in force immediately upon its  
58 passage and approval by the Mayor; otherwise it shall take effect and be in force  
59 at the earliest period allowed by law.

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62 Passed: \_\_\_\_\_  
63 \_\_\_\_\_  
64 President of Council

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67 Clerk of Council

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70 Approved: \_\_\_\_\_  
71 \_\_\_\_\_  
72 Mayor

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4 CITY OF CUYAHOGA FALLS, OHIO

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6 ORDINANCE NO. - 2016

7  
8 AN ORDINANCE AUTHORIZING THE MAYOR TO  
9 ENTER INTO AN AGREEMENT WITH THE STATE OF  
10 OHIO, OHIO RAIL DEVELOPMENT COMMISSION FOR  
11 IMPLEMENTATION OF A RAILROAD SAFETY  
12 PREEMPTION PROJECT, AND DECLARING AN  
13 EMERGENCY.  
14

15  
16 WHEREAS, Ohio Revised Code (“R.C.”) Section 4981.03 charges the Ohio Rail Development  
17 Commission (“ORDC”) with the development, promotion, and support of safe, adequate, and  
18 efficient rail service throughout the State; and  
19

20 WHEREAS, ORC Sections 4981.03(A)(3) and 4981.14(B)(5) charges the ORDC to undertake, or  
21 cause to be undertaken, maintenance of any rail service project by private corporations; and  
22

23 WHEREAS, the City and ORDC desire to enter into an agreement for the implementation of a  
24 railroad safety preemption project to promote and support vehicular and pedestrian safety.  
25

26 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls, County of  
27 Summit and State of Ohio, that:  
28

29 Section 1. The Mayor is authorized to enter into an agreement in substantially the same  
30 form as set forth in Exhibit A attached hereto and made a part of this ordinance, with the State of  
31 Ohio, Ohio Rail Development Commission for the modification of roadway to facilitate vehicle  
32 queue detection and sidewalk modifications on Broad Boulevard in the vicinity of the CSX  
33 Transportation grade crossing 142007P and traffic signal timing modifications of traffic signals at  
34 the intersection of Broad Boulevard and SR 8 and the intersection of Broad Boulevard and  
35 Newberry Street.  
36

37 Section 2. The Mayor, Director of Law, Director of Public Service, Director of Finance, and  
38 other City officials, as appropriate, be and are hereby authorized to execute, certify and/or  
39 furnish other such documents and do all other actions as are necessary to further the agreement  
40 referred to in Section 1 of this ordinance, and which are incidental to carrying out the purposes of  
41 this ordinance.  
42

43 Section 3. Any ordinances or resolutions or portions of ordinances and resolutions  
44 inconsistent herewith are hereby repealed, but any ordinances and resolutions not inconsistent  
45 herewith and which have not previously been repealed are hereby ratified and confirmed.  
46

47 Section 4. It is found and determined that all formal actions of this Council concerning and  
48 relating to the adoption of this ordinance were adopted in an open meeting of this Council, and

49 that all deliberations of this Council and of any of its committees that resulted in such formal  
50 action, were in meetings open to the public, in compliance with all legal requirements, to the  
51 extent applicable, including Chapter 107 of the Codified Ordinances.  
52

53 Section 5. This ordinance is hereby declared to be an emergency measure necessary for the  
54 preservation of the public peace, health, safety, convenience and welfare of the City of Cuyahoga  
55 Falls and the inhabitants thereof, for the reason that it is immediately necessary to implement  
56 this railroad safety preemption project for the safety of vehicular traffic and pedestrians, and  
57 provided it receives the affirmative vote of two thirds of the members elected or appointed to  
58 Council, it shall take effect and be in force immediately upon its passage and approval by the  
59 Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.  
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61 Passed: \_\_\_\_\_  
62 \_\_\_\_\_  
63 President of Council  
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66 \_\_\_\_\_  
67 Clerk of Council  
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69 Approved: \_\_\_\_\_  
70 \_\_\_\_\_  
71 Mayor  
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## AGREEMENT

This AGREEMENT ("AGREEMENT"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and among the STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION, (hereinafter referred to as "ORDC"), 1980 West Broad Street, Columbus, Ohio 43223, and CITY OF CUYAHOGA FALLS, (hereinafter referred to as "CITY" with principal offices at 2310 Second Street, Cuyahoga Falls, OH 44221

### WITNESSETH:

**WHEREAS**, Ohio Revised Code ("ORC") Section 4981.03 charges the ORDC with the development, promotion, and support of safe, adequate, and efficient rail service throughout the State; and

**WHEREAS**, ORC Sections 4981.03(A)(3) and 4981.14(B)(5) charge the ORDC to undertake, or cause to be undertaken, maintenance of any rail service project by private corporations;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and the covenants and AGREEMENTs herein contained, the parties hereto agree as follows:

**Article 1: DESCRIPTION:** The PROJECT pursuant to this AGREEMENT is the modification of roadway to facilitate vehicle queue detection and sidewalk modifications on Broad Boulevard in the vicinity of the CSX Transportation grade crossing 142007P and traffic signal timing modifications of traffic signals at the intersection of Broad Boulevard and SR 8 and the intersection of Broad Boulevard and Newberry Street.

The PROJECT is a transportation activity eligible to receive federal funding. The purpose of this AGREEMENT is to set forth requirements associated with the federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

Section 1.01 The CITY shall be responsible for design, labor, materials, and equipment to:

- Prepare design plans, bid, manage, and inspect the work included in Section 1.01. Submit design plans to ORDC for review prior to bidding project. The design shall meet all the requirements contained in Part 8 – Rail Grade Crossings in the Ohio Traffic Engineering Manual.
- Install and ensure appropriate functioning and/or placement of vehicle detection system for east bound Broad Boulevard.
- Construct sidewalk improvements on the north side of Broad Boulevard in the vicinity of the grade crossing.
- Eliminate sidewalk and pedestrian access on the south side of Broad Boulevard at the grade crossing.
- Install curbs on the north side of Broad Boulevard in the vicinity of the grade crossing.

- Make adjustments to the traffic signal timing to reduce queuing over the grade crossing.
- Provide roadway and pedestrian traffic control as needed for the work included in Section 1.01
- If needed, any cost for railroad flagging needed to complete the traffic signal construction should be included in project.

Any work not detailed above will be ineligible for reimbursement unless an ORDC approved change order has been issued.

The work described in Section 1.01 above shall be completed within eighteen (18) months of the date of execution of this AGREEMENT unless otherwise agreed to by ORDC.

After completion of the PROJECT, the CITY shall maintain the vehicle detection system to design standards and provide adequate maintenance activities for same, unless otherwise agreed to by ORDC. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ORDC. Nothing stated herein shall deny the CITY the right to seek reimbursement of the costs for the maintenance and renewal of the PROJECT and other of its facilities constructed or changed under the terms of this AGREEMENT, if such reimbursement is then provided for by Federal Highway Administration ("FHWA") regulations and/or the ORC.

**Article 2: PLANS AND SPECIFICATIONS:** The CITY shall design and construct the PROJECT in accordance with a recognized set of written design standards. The PROJECT will also conform to the Ohio Manual of Uniform Traffic Control Devices.

**Article 3: RIGHT OF WAY/UTILITIES/RAILROAD COORDINATION:**  
 Section 3.01 Right of way acquisition is not anticipated for this project. The CITY shall provide ORDC with its certification that all right of way property rights necessary for the PROJECT are under the CITY's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. The CITY shall be liable to repay to ORDC all of the federal funds disbursed to it under this Agreement if the certification of the CITY is found to be in error or otherwise invalid.

**Article 4: COMPETITIVE BIDDING:** CITY agrees to pursue the PROJECT in a manner that is cost effective for both the CITY and ORDC.

Section 4.01 The CITY shall secure the contract for the PROJECT through a competitive bidding process as described below:

- The CITY may conduct letter solicitations to contractors which they normally use.
- The CITY shall secure bids from at least three (3) contractors.
- The bid documents and the contractor bids must be supplied to the ORDC by the CITY prior to contractor selection by CITY.

- The CITY will verify that all contractors working on the PROJECT are neither suspended nor debarred from working on Federal aid projects at:  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Pages/default.aspx>

The CITY **shall not** advertise for bids prior to the receipt of the “Authorization to Advertise” notification from ORDC. Should advertising or work commence prior to the receipt of the “Authorization to Advertise” notification, ORDC shall immediately terminate this AGREEMENT and cease all Federal funding commitments.

Any use of sole source or proprietary bid items must be approved by ORDC. All sole source or proprietary bid items should be brought to the attention of ORDC Safety Programs Manager as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ORDC’s Traffic Engineering Manual.

Once the CITY receives ORDC authorization to advertise, the CITY may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The CITY shall submit to ORDC any addendum to be issued during the advertisement period that changes estimates or materials. ORDC shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

The CITY shall incorporate Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, in all contracts, as well as appropriate subcontracts and purchase orders.

Section 4.02. If the PROJECT work will be performed by CITY forces, the CITY shall secure any materials needed for the PROJECT through a competitive bidding process and shall secure bids from at least three (3) suppliers. The bid documents and the supplier bids must be supplied to the ORDC by the CITY prior to acceptance of a bid by the CITY. In order for CITY to use its own forces for the construction the CITY must demonstrate to the ORDC’s satisfaction that this is the most cost effective method of performing the work and ORDC must preapprove in writing the use of CITY forces.

**Article 5. METHOD OF PAYMENT**

Section 5.01 The total cost for the PROJECT is estimated to be \$80,000.00. ORDC shall provide to the CITY 100% of the eligible costs up to a maximum amount of \$80,000.00 in federal funds (“Funds”). This amount will be adjusted based on approved estimates and bid tabs. Additional eligible costs may be approved if authorized prior to being incurred, subject to federal approval.

Section 5.02 The Funds awarded pursuant to this AGREEMENT shall be used for obligations incurred in the performance of the AGREEMENT and shall be supported by contracts, invoices, vouchers, and other data as appropriate, evidencing the costs incurred. If the Funds are not

expended in accordance with the terms, conditions and a time period set forth in this AGREEMENT or the total amount of the Funds exceed the eligible costs of the PROJECT, the amounts improperly expended or not expended shall be returned to the ORDC within thirty (30) days after the expiration or termination of this AGREEMENT.

Section 5.03 The CITY may invoice ORDC monthly, or periodically when its allowable costs for the PROJECT work exceed \$1,000, for 100% of the PROJECT work completed, up to the maximum amount specified in Section 5.01 of this AGREEMENT. The invoice shall substantiate, to the satisfaction of the ORDC, PROJECT costs incurred. The adequacy and sufficiency of such invoices shall be determined solely by the ORDC. The ORDC shall not pay the CITY for any PROJECT work not included in Article 1 of this AGREEMENT. To facilitate ORDC's final inspection, all materials installed must be marked in such a way to be easily identifiable by the ORDC, and the CITY's final invoice shall include an inventory of installed materials by milepost or other segmentation of the PROJECT that is satisfactory to the ORDC. ORDC reserves the right to reject any invoice which does not segment the inventory of installed materials in a manner acceptable to ORDC.

Section 5.04 Payment shall be made within forty-five (45) days from the date of ORDC's approval of CITY's invoice. The ORDC shall have thirty (30) days from the receipt of the invoice to either approve or reject the invoice. If any invoice is rejected, ORDC shall immediately provide CITY with a notice and opportunity to correct any deficiency or error.

**Article 6. TERM OF AGREEMENT/SUSPENSION/TERMINATION:** This AGREEMENT shall terminate at the end of the present biennium, June 30, 2017. If obligations specified under this AGREEMENT are not completed by that date, it is the expressed intention of the parties to renew this AGREEMENT on each successive biennium period until such time as all obligations specified under this AGREEMENT has been satisfactorily completed.

Section 6.01 ORDC Termination: The ORDC shall have the right to terminate this AGREEMENT in the event of a material breach of this AGREEMENT by the CITY. The ORDC shall provide the CITY thirty (30) days written notice in advance of the exercise of its rights under this provision, unless the ORDC determines that substantial noncompliance cannot be corrected within a reasonable time, then the ORDC may immediately terminate this AGREEMENT.

Section 6.02 Suspension of Funding or Termination by the ORDC: The ORDC shall have the right to suspend funding of the PROJECT authorized under this AGREEMENT at any time in the event of any material breach or default by CITY, and for so long as the CITY fails substantially to comply with material terms and conditions of this AGREEMENT.

**Article 7. PROJECT INSPECTION**

Section 7.01 The CITY shall allow, upon reasonable notice, the inspection of and access to, the PROJECT by the ORDC. ORDC will notify the CITY if the nature of the work requires ORDC to have an inspector on the PROJECT site whenever the CITY is working.

Section 7.02 The CITY shall furnish written notification no later than five (5) working days prior to the date work will start at the PROJECT site to James Tucker, Project Manager, at 1980

West Broad Street, Mail Stop 3140, Columbus, Ohio, 43223, Cell 614-398-6897, or email at james.tucker@dot.ohio.gov with copy to catherine.stout@dot.ohio.gov. The CITY shall also notify the same of the details of any work stoppages, the subsequent resumption of the work activity, and the date work on which the PROJECT was completed. If the work is not inspected due to the lack of contractor notification to ORDC, that work may not be reimbursed with the Funds.

Section 7.03 The CITY shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The CITY shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications, if applicable.

**Article 8. AUDITS:** At any time during normal business hours upon ten (10) days written notice and as often as the ORDC may deem necessary and in such a manner as not to interfere with the normal business operations, the CITY shall make available to the ORDC, for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this AGREEMENT including, but not limited to, personnel and employment data, financial reports, rail car loading data, job creation data, derailment data, and all other relevant information and shall permit the ORDC to audit, examine and make excerpts or transcripts from such records. The CITY must retain all records associated with this AGREEMENT for a period of five (5) years after final payment has been made by the ORDC. The CITY must also ensure that all source documentation described above is maintained and made available to the ORDC for any sub consultants or outsourced work for the same time period.

The CITY is responsible for compliance with 49 CFR 18, *Uniform Administrative Requirements for Grant and Cooperative Agreements to State and Local Governments* and 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments*. These federal regulations establish minimally acceptable requirements for financial accounting systems, cost standards, and reporting that must be maintained in order to administer a federally-funded project.

**Article 9. REPRESENTATIONS AND WARRANTIES**

Section 9.01 The CITY warrants and represents the following:

- (a) CITY has the power and authority to enter into this AGREEMENT; and
- (b) CITY has the authority to carry out its obligations under this AGREEMENT; and
- (c) No personnel of the CITY, any subcontractor of the CITY, nor to the CITY's knowledge, any public official, employee or member of the governing body of the particular locality where the PROJECT shall be completed, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this AGREEMENT, shall prior to the completion of said work, voluntarily or involuntarily acquire any personal monetary interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this AGREEMENT. Any person who, prior to or after the execution of this AGREEMENT, acquires any such personal

monetary interest, involuntarily or voluntarily, shall immediately disclose his interest to the ORDC in writing. Thereafter, such person shall not participate in any action affecting the work under this AGREEMENT unless the ORDC determines that, in light of the personal monetary interest disclosed, his participation in any such action would not be contrary to the public interest.

Section 9.02 The ORDC represents and warrants that it has the power and authority to enter into this AGREEMENT and to carry out its obligations under this AGREEMENT.

**Article 10. OUTSTANDING LIABILITIES:** The CITY affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or a political subdivision of the State; (2) any monies to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other monies to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

**Article 11. NOTICES:** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, or sent by electronic mail with delivery confirmation to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

If to the CITY:	City of Cuyahoga Falls 2310 Second Street, Cuyahoga Falls, OH 44221 Attention: City Service Director
If to the ORDC:	Ohio Rail Development Commission 1980 West Broad Street, Mail Stop #3140 Columbus, Ohio 43223 Attention: Secretary-Treasurer

**Article 12. INSURANCE, INDEMNIFICATION AND RELEASE:** This AGREEMENT is without force and effect until such time that the CITY demonstrates to the satisfaction of the ORDC that it has commercial general liability insurance covering bodily and property insurance coverage, in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per each individual claim in regard to CITY's performance pursuant to this AGREEMENT unless otherwise prohibited by law. The CITY shall provide to the ORDC, within thirty (30) days of the effective date of this AGREEMENT, evidence of such coverage.

**Article 13. UNUSUAL CIRCUMSTANCES AFFECTING PERFORMANCE:** In the event that the CITY cannot meet any or all of the obligations placed upon it by the terms of this AGREEMENT, (1) the CITY shall immediately notify the ORDC in writing, and (2) the ORDC may, at its sole discretion, make reasonable efforts to assist the CITY in meeting its obligations under the AGREEMENT and If the CITY is unable to comply with its obligations under this AGREEMENT for a period no less than thirty (30) days, the CITY may seek modification in

accordance with the procedures set forth in this AGREEMENT, including but not limited to, the extension of the term of this AGREEMENT. Such extension shall be within the sole discretion of the ORDC unless outside of the CITY's control.

**Article 14. CONTINGENCIES:** It is expressly understood by the parties that none of the rights, duties, and obligations described in this AGREEMENT shall be binding on any party until all statutory provisions of the ORC, including but not limited to Section 126.07 and 126.08 have been complied with, and until such time that all necessary funds are made available and forthcoming from the appropriate state agency and such expenditure of funds is approved, if necessary, by the Controlling Board of the State of Ohio pursuant to Section 127.16 of the ORC.

**Article 15. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS:** The CITY agrees to comply with all applicable federal, state, and local laws, regulations, executive orders, and applicable ODOT manuals and guidelines. CITY accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by CITY on the performance of the work authorized by this AGREEMENT.

Further, if the CITY has knowingly made a false statement to the ORDC to obtain these funds, the CITY shall be required to return all funds immediately pursuant to ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to O.R.C. Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to O.R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

**Article 16. ORDC DISCLAIMER:** The ORDC shall have not have or acquire any right, title or interest in the PROJECT or any materials therein by virtue of the providing of funds for the performance of this AGREEMENT.

**Article 17. THIRD PARTY BENEFICIARY:** It is specifically agreed between the parties executing this AGREEMENT that it is not intended by any of the provisions hereof or of any other document to create in the public, or any person whomsoever, a third party beneficiary, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries, property damage or for loss, damage or delay of cargo or shipment by reason of, or under the terms or provisions of, this AGREEMENT. The duties, obligations and responsibilities of the parties to this AGREEMENT with respect to third parties shall remain solely as imposed by law.

**Article 18. DISPUTE RESOLUTION:** In the event the CITY desires clarification or explanation of, or disagrees with, any matter concerning the AGREEMENT, or the interpretation or application of any and all federal or state statutes, rules, regulations, laws or ordinances, the matter must be submitted in writing to the ORDC. After review and consultation with the CITY, the ORDC shall decide the matter. If the dispute cannot be resolved, and the CITY has failed to comply materially with the terms and conditions of this AGREEMENT, then procedures for suspension and/or termination may be instituted as provided for under this AGREEMENT, or

this matter may be submitted to a court of competent jurisdiction for final determination.

**Article 19. NONDISCRIMINATION:** In performing this AGREEMENT, the CITY shall not discriminate against any employee, applicant for employment, or other person because of race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The CITY will ensure that applicants are hired and that employees are treated during employment without regard to their race, color, religion, gender, national origin (ancestry), military status (past, present or future), disability, age (40 years of age or older), genetic information, or sexual orientation. The CITY 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 such subcontracts.

**Article 20. REMEDIES:** No remedy herein conferred or reserved by the ORDC is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the AGREEMENT now or hereafter existing at law or in equity, which in any event shall not exceed the amount of the Funds.

**Article 21. NO WAIVER:** No delay or omission to exercise any right or option accruing to ORDC upon any breach by the CITY shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by the ORDC. Further, if any term, provision, covenant or condition contained in this AGREEMENT is breached by either party and thereafter such breach is waived in writing by the other party, such waivers shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Article 22. CONSTRUCTION:** This AGREEMENT shall be governed by the laws of the State of Ohio as to all matters, including but not limited to, matters of validity, construction, effect and performance.

**Article 23. FORUM AND VENUE:** All actions regarding this AGREEMENT shall be in a forum and venue in a court of competent subject matter jurisdiction in Franklin County, Ohio.

**Article 24. SEVERABILITY:** Whenever possible, each provision of this AGREEMENT shall be interpreted in such manners as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this AGREEMENT.

**Article 25. ENTIRE AGREEMENT:** This AGREEMENT and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, AGREEMENTs and understandings, either oral or written, between the parties with respect to the subject matter hereof.

**Article 26. CAPTIONS:** The captions in this AGREEMENT are for the convenience of reference only and in no way define, limit or describe the scope or intent of this AGREEMENT or

any part hereof and shall not be considered in any construction hereof.

**Article 27. ASSIGNMENT:** Neither this AGREEMENT, nor any rights, duties or obligations described herein, shall be assigned or subcontracted without the prior advance written consent of the ORDC, which shall not be unreasonably withheld. In the event the ORDC approves an assignment, each and all of the terms and conditions of this AGREEMENT shall extend to the benefit of the respective successors and assigns.

**Article 28. AMENDMENTS OR MODIFICATIONS:** Any party may at any time during the term of this AGREEMENT request amendment or modification. Requests for amendment or modification of this AGREEMENT shall be in writing to the other parties and shall specify the requested changes and the justification for such changes. All parties shall then review the request for modification. Should the parties all agree to modification of the AGREEMENT, then an amendment shall be drawn, approved, and executed in the same manner as this AGREEMENT.

**Article 29. EFFECTIVE DATE:** This AGREEMENT shall become effective on the date it is fully executed by all parties which will be termed the "effective date."

**Article 30. BUY OHIO/BUY AMERICAN PROVISIONS; OFFSHORE  
OUTSOURCING PROVISION:**

*Section 30.01* The CITY shall use their best efforts to purchase goods from other companies doing business in the State of Ohio, for the purpose of performing work under this AGREEMENT. Further, in the performance of the work contemplated under this AGREEMENT, the CITY and all contractors, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

*Section 30.02* The CITY affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this AGREEMENT. Notwithstanding any other terms of this AGREEMENT, the ORDC reserves the right to recover any funds paid for services the CITY performs outside the United States for which it did not receive a waiver from the Director of the Ohio Department of Administrative Services.

**Article 31. STATE PROPERTY DRUG-FREE WORKPLACE COMPLIANCE:** In accordance with applicable State and Federal laws, rules, and policy, the CITY shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first above written.

CITY OF CUYAHOHOGA FALLS:

STATE OF OHIO, OHIO RAIL  
DEVELOPMENT COMMISSION:

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

Matthew R. Dietrich

TITLE: \_\_\_\_\_

Executive Director

DATE: \_\_\_\_\_

DATE: 1-6-16 \_\_\_\_\_

APPROVED AS TO FORM WITH REGARD  
TO OHIO RAIL DEVELOPMENT  
COMMISSION ONLY:



Assistant Attorney General Alan H. Klodell

Date 1/11/15 \_\_\_\_\_