

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 77 -2022

6
7 AN ORDINANCE PROVIDING FOR THE ISSUANCE
8 AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL
9 AMOUNT OF \$550,000, IN ANTICIPATION OF THE
10 ISSUANCE OF BONDS, FOR THE PURPOSE OF
11 PAYING THE COSTS CONSTRUCTION,
12 RECONSTRUCTION AND RENOVATION OF THE
13 MUNICIPAL BROOKLEDGE GOLF COURSE
14 CLUBHOUSE, INCLUDING BUT NOT LIMITED TO
15 THE CONSTRUCTION OF A 1,800 SQUARE FOOT
16 EXPANSION, ACQUISITION AND INSTALLATION OF
17 ELECTRICAL AND HVAC SYSTEMS, A NEW ROOF,
18 DOORS AND WINDOWS, AND RELATED
19 IMPROVEMENTS, CONSTRUCTION AND
20 REPLACEMENT OF SIDEWALKS AND A CART PATH
21 AROUND THE FACILITY, TOGETHER WITH ALL
22 NECESSARY APPURTENANCES THERETO, AND
23 DECLARING AN EMERGENCY.
24

25 WHEREAS, this Council has requested that the Director of Finance, as fiscal
26 officer of this City, certify the estimated life or period of usefulness of the
27 Improvement described in Section 1, the estimated maximum maturity of the
28 Bonds described in Section 1 and the maximum maturity of the Notes described
29 in Section 3; and
30

31 WHEREAS, the Director of Finance has certified to this Council that the
32 estimated life or period of usefulness of the Improvement described in Section 1
33 is at least five (5) years, the estimated maximum maturity of the Bonds described
34 in Section 1 is at least twenty (20) years, and the maximum maturity of the Notes
35 described in Section 3, to be issued in anticipation of the Bonds, is two hundred
36 forty (240) months;
37

38 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
39 Falls, Summit County, Ohio, that:
40

41 Section 1. It is necessary to issue bonds of this City in the maximum principal
42 amount of \$550,000 (the "Bonds") for the purpose of paying the costs of
43 construction, reconstruction and renovation of the municipal Brookledge golf
44 course clubhouse, including but not limited to the construction of a 1,800 square
45 foot expansion, acquisition and installation of electrical and HVAC systems, a
46 new roof, doors and windows, and related improvements, construction and
47 replacement of sidewalks and a cart path around the facility, together with all
48 necessary appurtenances thereto (the "Improvement").
49

50 Section 2. The Bonds shall be dated approximately November 1, 2023, shall
51 bear interest at the now estimated rate of 5.50% per year, payable on June 1 and
52 December 1 of each year, commencing June 1, 2024, until the principal amount
53 is paid, and are estimated to mature in twenty (20) annual principal installments
54 that are in such amounts that the total principal and interest payments on the

55 Bonds in any fiscal year in which principal is payable are not more than three
56 times the amount of those payments in any other fiscal year. The first principal
57 installment is estimated to be December 1, 2024.
58

59 Section 3. It is necessary to issue and this Council determines that notes in
60 the maximum principal amount of \$550,000 (the "Notes") shall be issued in
61 anticipation of the issuance of the Bonds for the purpose stated in Section 1, and
62 to pay the costs of the Improvement and any financing costs. The principal
63 amount of Notes to be issued (not to exceed the stated maximum principal
64 amount) shall be determined by the Director of Finance in the certificate awarding
65 the Notes in accordance with Section 6 of this ordinance (the "Certificate of
66 Award") as the amount which, along with other available funds of the City, is
67 necessary to pay the costs of the Improvement and any financing costs. The
68 Notes shall be dated the date of issuance and shall mature not earlier than six
69 months from that date and not later than 12 months from that date, as shall
70 likewise be fixed by the Director of Finance in the Certificate of Award. The Notes
71 shall bear interest at a rate or rates not to exceed 6.00% per year (computed on
72 the basis of a 360-day year consisting of twelve 30-day months), payable at
73 maturity and until the principal amount is paid or payment is provided for. The
74 rate or rates of interest on the Notes shall be determined by the Director of
75 Finance in the Certificate of Award in accordance with Section 6 of this ordinance.
76

77 Section 4. The debt charges on the Notes shall be payable in Federal Reserve
78 funds of the United States of America, and shall be payable, without deduction
79 for services of the City's paying agent, at the designated corporate trust office of
80 The Huntington National Bank or at the office of a bank or trust company
81 designated by the Director of Finance in the Certificate of Award after determining
82 that the payment at that bank or trust company will not endanger the funds or
83 securities of the City and that proper procedures and safeguards are available for
84 that purpose or at the office of the Director of Finance if agreed to by the Director
85 of Finance and the original purchaser (the "Paying Agent"). The Director of
86 Finance is authorized, to the extent necessary or appropriate, to enter into an
87 agreement with the Paying Agent in connection with the services to be provided
88 by the Paying Agent after determining that the signing thereof will not endanger
89 the funds or securities of the City.
90

91 Section 5. The Notes shall be signed by the Mayor and Director of Finance,
92 in the name of the City and in their official capacities, provided that one of those
93 signatures may be a facsimile. The Notes shall be issued in minimum
94 denominations of \$100,000 (and may be issued in denominations in such
95 amounts in excess thereof as requested by the original purchaser and approved
96 by the Director of Finance) and with numbers as requested by the original
97 purchaser and approved by the Director of Finance. The entire principal amount
98 may be represented by a single note and may be issued as fully registered
99 securities (for which the Director of Finance will serve as note registrar) and in
100 book entry or other uncertificated form in accordance with Section 9.96 and
101 Chapter 133 of the Ohio Revised Code if it is determined by the Director of
102 Finance that issuance of fully registered securities in that form will facilitate the
103 sale and delivery of the Notes. The Notes shall not have coupons attached, shall
104 be numbered as determined by the Director of Finance and shall express upon
105 their faces the purpose, in summary terms, for which they are issued and that
106 they are issued pursuant to this ordinance. As used in this section and this
107 ordinance:

108 “Book entry form” or “book entry system” means a form or system under
109 which (a) the ownership of beneficial interests in the Notes and the principal of
110 and interest on the Notes may be transferred only through a book entry, and (b)
111 a single physical Note certificate in fully registered form is issued by the City and
112 payable only to a Depository or its nominee as registered owner, with the
113 certificate deposited with and “immobilized” in the custody of the Depository or
114 its designated agent for that purpose. The book entry maintained by others than
115 the City is the record that identifies the owners of beneficial interests in the Notes
116 and that principal and interest.
117

118 “Depository” means any securities depository that is a clearing agency
119 registered pursuant to the provisions of Section 17A of the Securities Exchange
120 Act of 1934, operating and maintaining, with its Participants or otherwise, a book
121 entry system to record ownership of beneficial interests in the Notes or the
122 principal of and interest on the Notes, and to effect transfers of the Notes, in book
123 entry form, and includes and means initially The Depository Trust Company (a
124 limited purpose trust company), New York, New York.
125

126 “Participant” means any participant contracting with a Depository under a
127 book entry system and includes securities brokers and dealers, banks and trust
128 companies and clearing corporations.
129

130 The Notes may be issued to a Depository for use in a book entry system and,
131 if and as long as a book entry system is utilized, (a) the Notes may be issued in
132 the form of a single Note made payable to the Depository or its nominee and
133 immobilized in the custody of the Depository or its agent for that purpose; (b) the
134 beneficial owners in book entry form shall have no right to receive the Notes in
135 the form of physical securities or certificates; (c) ownership of beneficial interests
136 in book entry form shall be shown by book entry on the system maintained and
137 operated by the Depository and its Participants, and transfers of the ownership
138 of beneficial interests shall be made only by book entry by the Depository and its
139 Participants; and (d) the Notes as such shall not be transferable or exchangeable,
140 except for transfer to another Depository or to another nominee of a Depository,
141 without further action by the City.
142

143 If any Depository determines not to continue to act as a Depository for the
144 Notes for use in a book entry system, the Director of Finance may attempt to
145 establish a securities depository/book entry relationship with another qualified
146 Depository. If the Director of Finance does not or is unable to do so, the Director
147 of Finance, after making provision for notification of the beneficial owners by the
148 then Depository and any other arrangements deemed necessary, shall permit
149 withdrawal of the Notes from the Depository, and shall cause the Notes in bearer
150 or payable form to be signed by the officers authorized to sign the Notes and
151 delivered to the assigns of the Depository or its nominee, all at the cost and
152 expense (including any costs of printing), if the event is not the result of City
153 action or inaction, of those persons requesting such issuance.
154

155 The Director of Finance is also hereby authorized and directed, to the extent
156 necessary or required, to enter into any agreements determined necessary in
157 connection with the book entry system for the Notes, after determining that the
158 signing thereof will not endanger the funds or securities of the City.
159

160 Section 6. The Notes shall be sold at not less than 97% of the par value thereof
161 at private sale by the Director of Finance in accordance with law and the

162 provisions of this ordinance, the Certificate of Award and the Note Purchase
163 Agreement (as hereinafter defined). The Director of Finance shall, in accordance
164 with his determination of the best interests of and financially advantageous to
165 the City and its taxpayers and conditions then existing in the financial market,
166 consistently with the provisions of Sections 3 and 4, establish the interest rates
167 to be borne by the Notes and their maturity, sign the Certificate of Award referred
168 to in Sections 3 and 4 evidencing those determinations, cause the Notes to be
169 prepared, and have the Notes signed and delivered, together with a true transcript
170 of proceedings with reference to the issuance of the Notes, if requested by the
171 original purchaser, to the original purchaser upon payment of the purchase price.
172 The note purchase agreement (the "Note Purchase Agreement") now on file with
173 the Clerk of Council is approved, and the Mayor and the Director of Finance are
174 authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement
175 with such changes that are not inconsistent with the provisions of this ordinance,
176 are not materially adverse to the interests of the City and are approved by the
177 Mayor and the Director of Finance. Any such changes to the Note Purchase
178 Agreement are not materially adverse to the interests of the City and are approved
179 by the Mayor and the Director of Finance shall be evidenced conclusively by the
180 signing of the Note Purchase Agreement by the Mayor and the Director of Finance.
181 The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and
182 other City officials, as appropriate, and any person serving in an interim or acting
183 capacity for any such official, are each authorized and directed to sign any
184 transcript certificates, financial statements and other documents and
185 instruments, including any paying agent agreement, and to take such actions as
186 are necessary and appropriate to consummate the transactions contemplated by
187 this ordinance. The actions of the Mayor, the Director of Finance, the Director of
188 Law, the Clerk of Council or other City official, as appropriate, in doing any and
189 all acts necessary in connection with the issuance and sale of the Notes are
190 hereby ratified and confirmed. The Director of Finance is authorized, if it is
191 determined to be in the best interest of the City, to combine the issue of Notes
192 with one or more other note issues of the City into a consolidated note issue
193 pursuant to Section 133.30(B) of the Ohio Revised Code.

194
195 The Director of Finance is also hereby authorized to offer all or part of the
196 Notes at par and any accrued interest to the Treasury Investment Board of the
197 City for investment under Section 731.56 of the Ohio Revised Code, in
198 accordance with law and the provisions of this ordinance if, as a result of the
199 conditions then existing in the financial markets, the Director of Finance
200 determines it is in the best financial interest of the City in lieu of the private sale
201 authorized in the preceding paragraph and which determination shall be set forth
202 in the Certificate of Award.

203
204 Section 7. The proceeds from the sale of the Notes received by the City (or
205 withheld by the original purchaser or deposited with the Paying Agent, in each
206 case on behalf of the City) shall be paid into the proper fund or funds, and those
207 proceeds are appropriated and shall be used for the purpose for which the Notes
208 are being issued. The Certificate of Award may authorize the original purchaser
209 to (a) withhold certain proceeds from the sale of the Notes or (b) remit certain
210 proceeds from the sale of the Notes to the Paying Agent, in each case to provide
211 for the payment of certain financing costs on behalf of the City. If proceeds are
212 remitted to the Paying Agent in accordance with this Section 7, the Paying Agent
213 shall be authorized to create a fund in accordance with the Certificate of Award
214 for that purpose. Any portion of those proceeds received by the City (after

215 payment of those financing costs) representing premium or accrued interest shall
216 be paid into the Bond Retirement Fund.

217
218 Section 8. The par value to be received from the sale of the Bonds or of any
219 renewal notes and any excess funds resulting from the issuance of the Notes
220 shall, to the extent necessary, be used to pay the debt charges on the Notes at
221 maturity and are pledged for that purpose.

222
223 Section 9. During the year or years in which the Notes are outstanding, there
224 shall be levied on all the taxable property in the City, in addition to all other taxes,
225 the same tax that would have been levied if the Bonds had been issued without
226 the prior issuance of the Notes. The tax shall be within the eleven-mill limitation
227 provided by the Charter of the City, shall be and is ordered computed, certified,
228 levied and extended upon the tax duplicate and collected by the same officers, in
229 the same manner, and at the same time that taxes for general purposes for each
230 of those years are certified, levied, extended and collected, and shall be placed
231 before and in preference to all other items and for the full amount thereof. The
232 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is
233 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds
234 when and as the same fall due.

235
236 In each year to the extent receipts from the municipal income tax are available
237 for the payment of the debt charges on the Notes or the Bonds and are
238 appropriated for that purpose, the amount of the tax shall be reduced by the
239 amount of such receipts so available and appropriated in compliance with the
240 following covenant. To the extent necessary, the debt charges on the Notes or
241 the Bonds shall be paid from municipal income taxes lawfully available therefor
242 under the Constitution and the laws of the State of Ohio, and the Charter of the
243 City; and the City hereby covenants, subject and pursuant to such authority,
244 including particularly Section 133.05(B)(7) of the Ohio Revised Code, to
245 appropriate annually from such municipal income taxes such amount as is
246 necessary to meet such annual debt charges.

247
248 Nothing in the preceding paragraph in any way diminishes the irrevocable
249 pledge of the full faith and credit and general property taxing power of the City to
250 the prompt payment of the debt charges on the Notes and the Bonds.

251
252 Section 10. The City covenants that it will use, and will restrict the use and
253 investment of, the proceeds of the Notes in such manner and to such extent, as
254 may be necessary so that (a) the Notes will not (i) constitute private activity bonds
255 or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of
256 1986, as amended (the "Code") or (ii) be treated other than as bonds the interest
257 on which is excluded from gross income under Section 103 of the Code, and (b)
258 the interest on the Notes will not be an item of tax preference under Section 57
259 of the Code.

260
261 The City further covenants that (a) it will take or cause to be taken such
262 actions that may be required of it for the interest on the Notes to be and remain
263 excluded from gross income for federal income tax purposes, (b) it will not take
264 or authorize to be taken any actions that would adversely affect that exclusion,
265 and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply
266 the proceeds of the Notes to the governmental purpose of the borrowing, (ii)
267 restrict the yield on investment property, (iii) make timely and adequate payments
268 to the federal government, (iv) maintain books and records and make calculations

269 and reports and (v) refrain from certain uses of those proceeds, and, as
270 applicable, of property financed with such proceeds, all in such manner and to
271 the extent necessary to assure such exclusion of that interest under the Code.
272

273 The Director of Finance, as the fiscal officer, or any other officer of the City
274 having responsibility for issuance of the Notes is hereby authorized (a) to make
275 or effect any election, selection, designation, choice, consent, approval, or waiver
276 on behalf of the City with respect to the Notes as the City is permitted to or
277 required to make or give under the federal income tax laws, for the purpose of
278 assuring, enhancing or protecting favorable tax treatment or status of the Notes
279 or interest thereon or assisting compliance with requirements for that purpose,
280 reducing the burden or expense of such compliance, reducing the rebate amount
281 or payments or penalties, or making payments of special amounts in lieu of
282 making computations to determine, or paying, excess earnings as rebate, or
283 obviating those amounts or payments, as determined by that officer, which action
284 shall be in writing and signed by the officer, (b) to take any and all other actions,
285 make or obtain calculations, make payments, and make or give reports,
286 covenants and certifications of and on behalf of the City, as may be appropriate
287 to assure the exclusion of interest from gross income and the intended tax status
288 of the Notes, and (c) to give one or more appropriate certificates of the City, for
289 inclusion in the transcript of proceedings for the Notes, setting forth the
290 reasonable expectations of the City regarding the amount and use of all the
291 proceeds of the Notes, the facts, circumstances and estimates on which they are
292 based, and other facts and circumstances relevant to the tax treatment of the
293 interest on and the tax status of the Notes. The Director of Finance or any other
294 officer of the City having responsibility for issuance of the Notes is specifically
295 authorized to designate the Notes as "qualified tax-exempt obligations" if such
296 designation is applicable and desirable, and to make any related necessary
297 representations and covenants.
298

299 Section 11. The Director of Finance is authorized to request a rating for the
300 Notes from Moody's Investors Service, Inc. or S&P Global Ratings, or both, as the
301 Director of Finance determines is in the best interest of the City. The expenditure
302 of the amounts necessary to secure any such ratings as well as to pay the other
303 financing costs (as defined in Section 133.01 of the Ohio Revised Code) in
304 connection with the Notes is hereby authorized and approved and the amounts
305 necessary to pay those costs are hereby appropriated from the proceeds of the
306 Notes, if available, and otherwise from available moneys in the General Fund.
307

308 Section 12. The Clerk of Council is directed to deliver a certified copy of this
309 ordinance to the Fiscal Officer in Summit County.
310

311 Section 13. This Council determines that all acts and conditions necessary
312 to be done or performed by the City or to have been met precedent to and in the
313 issuing of the Notes in order to make them legal, valid and binding general
314 obligations of the City have been performed and have been met, or will at the time
315 of delivery of the Notes have been performed and have been met, in regular and
316 due form as required by law; that the full faith and credit and general property
317 taxing power (as described in Section 9) of the City are pledged for the timely
318 payment of the debt charges on the Notes; and that no statutory or constitutional
319 limitation of indebtedness or taxation will have been exceeded in the issuance of
320 the Notes.

321 Section 14. The legal services of the law firm of Squire Patton Boggs (US) LLP
322 are hereby retained. Those legal services shall be in the nature of legal advice
323 and recommendations as to the documents and the proceedings in connection
324 with the authorization, sale and issuance of the Notes and securities issued in
325 renewal of the Notes and rendering at delivery related legal opinions, all as set
326 forth in the form of engagement letter from that firm which is now on file in the
327 office of the Clerk of Council. In providing those legal services, as an independent
328 contractor and in an attorney-client relationship, that firm shall not exercise any
329 administrative discretion on behalf of this City in the formulation of public policy,
330 expenditure of public funds, enforcement of laws, rules and regulations of the
331 State of Ohio, any county or municipal corporation or of this City, or the
332 execution of public trusts. For those legal services, that firm shall be paid just
333 and reasonable compensation and shall be reimbursed for actual out-of-pocket
334 expenses incurred in providing those legal services. To the extent they are not
335 paid or reimbursed pursuant to the Note Purchase Agreement, the Director of
336 Finance is authorized and directed to make appropriate certification as to the
337 availability of funds for those fees and any reimbursement and to issue an
338 appropriate order for their timely payment as written statements are submitted
339 by that firm. The amounts necessary to pay those fees and any reimbursement
340 are hereby appropriated from the proceeds of the Notes, if available, and
341 otherwise from available moneys in the General Fund.
342

343 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal
344 advisor, are hereby retained. The municipal advisory services shall be in the
345 nature of financial advice and recommendations in connection with the issuance
346 and sale of the Notes. In rendering those municipal advisory services, as an
347 independent contractor, that firm shall not exercise any administrative discretion
348 on behalf of the City in the formulation of public policy, expenditure of public
349 funds, enforcement of laws, rules and regulations of the State of Ohio, the City
350 or any other political subdivision, or the execution of public trusts. That firm
351 shall be paid just and reasonable compensation for those municipal advisory
352 services and shall be reimbursed for the actual out-of-pocket expenses it incurs
353 in rendering those municipal advisory services. To the extent they are not paid
354 or reimbursed pursuant to the Note Purchase Agreement, the Director of Finance
355 is authorized and directed to make appropriate certification as to the availability
356 of funds for those fees and any reimbursement and to issue an appropriate order
357 for their timely payment as written statements are submitted by that firm. The
358 amounts necessary to pay those fees and any reimbursement are hereby
359 appropriated from the proceeds of the Notes, if available, and otherwise from
360 available moneys in the General Fund.
361

362 Section 16. This Council finds and determines that all formal actions of this
363 Council and any of its committees concerning and relating to the passage of this
364 ordinance were taken in an open meeting of this Council or any of its committees,
365 and that all deliberations of this Council and of any of its committees that
366 resulted in those formal actions were in meetings open to the public, all in
367 compliance with Chapter 107 of the City's Codified Ordinances.
368

369 Section 17. This ordinance is declared to be an emergency measure necessary
370 for the immediate preservation of the public peace, health and safety of the City,
371 and for the further reason that this ordinance is required to be immediately
372 effective in order to issue and sell the Notes, which is necessary for the City to
373 meet its obligations under contracts for construction of the Improvement and to
374 provide for the health and welfare of the City residents; wherefore, this ordinance

375 shall be in full force and effect immediately upon its passage and approval by the
376 Mayor, otherwise it shall take effect and be in force at the earliest period allowed
377 by law.

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380 Passed: 9-12-, 2022

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386 Approved: 9-12-2022, 2022

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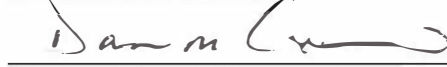
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7/25/22


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President of Council



Clerk of Council



Mayor