

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 90 - 2023

6
7 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
8 SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF
9 \$1,255,000, IN ANTICIPATION OF THE ISSUANCE OF
10 BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF
11 ACQUIRING, CONSTRUCTING, RECONSTRUCTING,
12 IMPROVING, EQUIPPING AND INSTALLING 3,400 LINEAL
13 FEET OF SANITARY SEWER LINES, 3,550 FEET OF WATER
14 MAIN LINES AND 8,000 LINEAL FEET OF ELECTRICAL
15 CONDUIT WIRING, RELATED STORM SEWER LINES AND
16 RETENTION, EROSION CONTROL AND LANDSCAPING
17 ALONG PRINCETON PLACE BOULEVARD, NOTTINGHAM
18 TRAIL, BAINBRIDGE TRAIL AND KENSINGTON COURT,
19 AND DECLARING AN EMERGENCY.
20

21 WHEREAS, pursuant to Ordinance No. 78-2022 passed September 12, 2022, notes
22 in anticipation of bonds in the amount of \$1,200,000 dated November 8, 2022 (the
23 "Outstanding Notes"), were issued for the purpose stated in Section 1, as part of a
24 consolidated issue pursuant to Section 133.30(B) of the Ohio Revised Code in the
25 aggregate principal amount of \$5,245,000, to mature on November 8, 2023; and
26

27 WHEREAS, this Council finds and determines that the City should retire the
28 Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds
29 available to the City; and
30

31 WHEREAS, this Council has requested that the Director of Finance, as fiscal officer
32 of this City, certify the estimated life or period of usefulness of the Improvement
33 described in Section 1, the estimated maximum maturity of the Bonds described in
34 Section 1 and the maximum maturity of the Notes described in Section 3; and
35

36 WHEREAS, the Director of Finance has certified to this Council that the estimated
37 life or period of usefulness of the Improvement described in Section 1 is at least five (5)
38 years, the estimated maximum maturity of the Bonds described in Section 1 is at least
39 twenty (20) years, and the maximum maturity of the Notes described in Section 3, to be
40 issued in anticipation of the Bonds, is November 8, 2042 as to \$1,200,000 of the
41 principal amount and two hundred forty (240) months as to \$55,000 of the principal
42 amount.
43

44 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
45 Summit County, Ohio, that:
46

47 Section 1. It is necessary to issue bonds of this City in the maximum principal
48 amount of \$1,255,000 (the "Bonds") for the purpose of (i) paying the costs of acquiring,
49 constructing, reconstructing, improving, equipping and installing 3,400 lineal feet of
50 sanitary sewer lines, 3,550 feet of water main lines and 8,000 lineal feet of electrical
51 conduit wiring, related storm sewer lines and retention, erosion control and landscaping
52 along Princeton Place Boulevard, Nottingham Trail, Bainbridge Trail and Kensington
53 Court (the "Improvement") and (ii) paying capitalized interest.

54 Section 2. The Bonds shall be dated approximately November 1, 2024, shall bear
55 interest at the now estimated rate of 6.00% per year, payable on June 1 and December
56 1 of each year, commencing June 1, 2025, until the principal amount is paid, and are
57 estimated to mature in twenty (20) annual principal installments that are in such
58 amounts that the total principal and interest payments on the Bonds in any fiscal year
59 in which principal is payable are not more than three times the amount of those
60 payments in any other fiscal year. The first principal installment is estimated to be
61 December 1, 2025.

62
63 Section 3. It is necessary to issue and this Council determines that notes in the
64 maximum principal amount of \$1,255,000 (the "Notes") shall be issued in anticipation
65 of the issuance of the Bonds for the purpose stated in Section 1 and to retire, together
66 with other funds available to the City, the Outstanding Notes, to pay capitalized interest
67 and to pay any financing costs. The principal amount of Notes to be issued (not to
68 exceed the stated maximum principal amount) shall be determined by the Director of
69 Finance in the certificate awarding the Notes in accordance with Section 6 of this
70 ordinance (the "Certificate of Award") as the amount which, along with other available
71 funds of the City, is necessary to provide for the retirement of the Outstanding Notes,
72 and capitalized interest (if any) and to pay any financing costs. The Notes shall be dated
73 the date of issuance and shall mature not earlier than six months from that date and
74 not later than 12 months from that date, as shall likewise be fixed by the Director of
75 Finance in the Certificate of Award. The Notes shall bear interest at a rate or rates not
76 to exceed 7.00% per year (computed on the basis of a 360-day year consisting of twelve
77 30-day months), payable at maturity and until the principal amount is paid or payment
78 is provided for. The rate or rates of interest on the Notes shall be determined by the
79 Director of Finance in the Certificate of Award in accordance with Section 6 of this
80 ordinance.

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

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

108 for which they are issued and that they are issued pursuant to this ordinance. As used
109 in this section and this ordinance:

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

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

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

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

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

162 ordinance, the Certificate of Award and the Note Purchase Agreement (as hereinafter
163 defined). The Director of Finance shall, in accordance with his determination of the best
164 interests of and financially advantageous to the City and its taxpayers and conditions
165 then existing in the financial market, consistently with the provisions of Sections 3 and
166 4, establish the interest rates to be borne by the Notes and their maturity, sign the
167 Certificate of Award referred to in Sections 3 and 4 evidencing those determinations,
168 cause the Notes to be prepared, and have the Notes signed and delivered, together with
169 a true transcript of proceedings with reference to the issuance of the Notes, if requested
170 by the original purchaser, to the original purchaser upon payment of the purchase price.
171

172 The note purchase agreement (the "Note Purchase Agreement") now on file with the
173 Clerk of Council is approved, and the Mayor and the Director of Finance are authorized
174 to sign and deliver, on behalf of the City, the Note Purchase Agreement with such
175 changes that are not inconsistent with the provisions of this ordinance, are not
176 materially adverse to the interests of the City and are approved by the Mayor and the
177 Director of Finance. Any such changes to the Note Purchase Agreement are not
178 materially adverse to the interests of the City and are approved by the Mayor and the
179 Director of Finance shall be evidenced conclusively by the signing of the Note Purchase
180 Agreement by the Mayor and the Director of Finance. The Mayor, the Director of
181 Finance, the Director of Law, the Clerk of Council and other City officials, as
182 appropriate, and any person serving in an interim or acting capacity for any such
183 official, are each authorized and directed to sign any transcript certificates, financial
184 statements and other documents and instruments, including any paying agent
185 agreement, and to take such actions as are necessary and appropriate to consummate
186 the transactions contemplated by this ordinance. The actions of the Mayor, the Director
187 of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate,
188 in doing any and all acts necessary in connection with the issuance and sale of the
189 Notes are hereby ratified and confirmed. The Director of Finance is authorized, if it is
190 determined to be in the best interest of the City, to combine the issue of Notes with one
191 or more other note issues of the City into a consolidated note issue pursuant to
192 Section 133.30(B) of the Ohio Revised Code.
193

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

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

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

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

231 In each year to the extent the service payments in lieu of real property taxes (the
232 "Service Payments") deposited into the Princeton Crossroads Municipal Public
233 Improvement Tax Increment Equivalent Fund created pursuant to Section 5709.43(A)
234 of the Ohio Revised Code and Ordinance No. 11-2022 passed February 14, 2022 (the
235 "TIF Ordinance") are available for the payment of the debt charges on the Notes or the
236 Bonds and are appropriated for that purpose, the amount of the tax shall be reduced
237 by the amount of the Service Payments so available and appropriated.
238

239 In each year to the extent net revenues from the City's water system are available for
240 the payment of the debt charges on the Notes or the Bonds and are appropriated for
241 that purpose, the amount of the tax shall be reduced by the amount of such net
242 revenues so available and appropriated.
243

244 In each year to the extent net revenues from the City's storm sewer system are
245 available for the payment of the debt charges on the Notes or the Bonds and are
246 appropriated for that purpose, the amount of the tax shall be reduced by the amount of
247 such net revenues so available and appropriated.
248

249 In each year to the extent net revenues from the City's sanitary sewer system are
250 available for the payment of the debt charges on the Notes or the Bonds and are
251 appropriated for that purpose, the amount of the tax shall be reduced by the amount of
252 such net revenues so available and appropriated.
253

254 In each year to the extent receipts from the municipal income tax are available for
255 the payment of the debt charges on the Notes or the Bonds and are appropriated for
256 that purpose, and to the extent not paid from the Service Payments or net revenues of
257 the City's water system, the City's storm sewer system or the City's sanitary sewer
258 system, the amount of the tax shall be reduced by the amount of such receipts so
259 available and appropriated in compliance with the following covenant. To the extent
260 necessary, the debt charges on the Notes or the Bonds shall be paid from municipal
261 income taxes lawfully available therefor under the Constitution and the laws of the State
262 of Ohio, and the Charter of the City; and the City hereby covenants, subject and
263 pursuant to such authority, including particularly Section 133.05(B)(7) of the Ohio
264 Revised Code, to appropriate annually from such municipal income taxes such amount
265 as is necessary to meet such annual debt charges.

266 Nothing in the five preceding paragraphs in any way diminishes the irrevocable
267 pledge of the full faith and credit and general property taxing power of the City to the
268 prompt payment of the debt charges on the Notes and the Bonds.
269

270 Section 10. The City covenants that it will use, and will restrict the use and
271 investment of, the proceeds of the Notes in such manner and to such extent, as may be
272 necessary so that (a) the Notes will not (i) constitute private activity bonds or arbitrage
273 bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended
274 (the "Code") or (ii) be treated other than as bonds the interest on which is excluded from
275 gross income under Section 103 of the Code, and (b) the interest on the Notes will not
276 be an item of tax preference under Section 57 of the Code.
277

278 The City further covenants that (a) it will take or cause to be taken such actions that
279 may be required of it for the interest on the Notes to be and remain excluded from gross
280 income for federal income tax purposes, (b) it will not take or authorize to be taken any
281 actions that would adversely affect that exclusion, and (c) it, or persons acting for it,
282 will, among other acts of compliance, (i) apply the proceeds of the Notes to the
283 governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii)
284 make timely and adequate payments to the federal government, (iv) maintain books and
285 records and make calculations and reports and (v) refrain from certain uses of those
286 proceeds, and, as applicable, of property financed with such proceeds, all in such
287 manner and to the extent necessary to assure such exclusion of that interest under the
288 Code.
289

290 The Director of Finance, as the fiscal officer, or any other officer of the City having
291 responsibility for issuance of the Notes is hereby authorized (a) to make or effect any
292 election, selection, designation, choice, consent, approval, or waiver on behalf of the City
293 with respect to the Notes as the City is permitted to or required to make or give under
294 the federal income tax laws, for the purpose of assuring, enhancing or protecting
295 favorable tax treatment or status of the Notes or interest thereon or assisting compliance
296 with requirements for that purpose, reducing the burden or expense of such compliance,
297 reducing the rebate amount or payments or penalties, or making payments of special
298 amounts in lieu of making computations to determine, or paying, excess earnings as
299 rebate, or obviating those amounts or payments, as determined by that officer, which
300 action shall be in writing and signed by the officer, (b) to take any and all other actions,
301 make or obtain calculations, make payments, and make or give reports, covenants and
302 certifications of and on behalf of the City, as may be appropriate to assure the exclusion
303 of interest from gross income and the intended tax status of the Notes, and (c) to give
304 one or more appropriate certificates of the City, for inclusion in the transcript of
305 proceedings for the Notes, setting forth the reasonable expectations of the City regarding
306 the amount and use of all the proceeds of the Notes, the facts, circumstances and
307 estimates on which they are based, and other facts and circumstances relevant to the
308 tax treatment of the interest on and the tax status of the Notes. The Director of Finance
309 or any other officer of the City having responsibility for issuance of the Notes is
310 specifically authorized to designate the Notes as "qualified tax-exempt obligations" if
311 such designation is applicable and desirable, and to make any related necessary
312 representations and covenants.
313

314 Each covenant made in this section with respect to the Notes is also made with
315 respect to all issues any portion of the debt service on which is paid from proceeds of
316 the Notes (and, if different, the original issue and any refunding issues in a series of
317 refundings), to the extent such compliance is necessary to assure exclusion of interest
318 on the Notes from gross income for federal income tax purposes, and the officers

319 identified above are authorized to take actions with respect to those issues as they are
320 authorized in this section to take with respect to the Notes.
321

322 Section 11. The Director of Finance is authorized to request a rating for the Notes
323 from Moody's Investors Service, Inc. or S&P Global Ratings, or both, as the Director of
324 Finance determines is in the best interest of the City. The expenditure of the amounts
325 necessary to secure any such ratings as well as to pay the other financing costs (as
326 defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is
327 hereby authorized and approved and the amounts necessary to pay those costs are
328 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
329 available moneys in the General Fund.
330

331 Section 12. The Clerk of Council is directed to deliver a certified copy of this
332 ordinance to the Fiscal Officer in Summit County.
333

334 Section 13. This Council determines that all acts and conditions necessary to be
335 done or performed by the City or to have been met precedent to and in the issuing of
336 the Notes in order to make them legal, valid and binding general obligations of the City
337 have been performed and have been met, or will at the time of delivery of the Notes have
338 been performed and have been met, in regular and due form as required by law; that
339 the full faith and credit and general property taxing power (as described in Section 9) of
340 the City are pledged for the timely payment of the debt charges on the Notes; and that
341 no statutory or constitutional limitation of indebtedness or taxation will have been
342 exceeded in the issuance of the Notes.
343

344 Section 14. The legal services of the law firm of Squire Patton Boggs (US) LLP are
345 hereby retained. Those legal services shall be in the nature of legal advice and
346 recommendations as to the documents and the proceedings in connection with the
347 authorization, sale and issuance of the Notes and securities issued in renewal of the
348 Notes and rendering at delivery related legal opinions, all as set forth in the form of
349 engagement letter from that firm which is now on file in the office of the Clerk of Council.
350 In providing those legal services, as an independent contractor and in an attorney-client
351 relationship, that firm shall not exercise any administrative discretion on behalf of this
352 City in the formulation of public policy, expenditure of public funds, enforcement of
353 laws, rules and regulations of the State of Ohio, any county or municipal corporation or
354 of this City, or the execution of public trusts. For those legal services, that firm shall
355 be paid just and reasonable compensation and shall be reimbursed for actual out-of-
356 pocket expenses incurred in providing those legal services. To the extent they are not
357 paid or reimbursed pursuant to the Note Purchase Agreement and/or the Certificate of
358 Award, the Director of Finance is authorized and directed to make appropriate
359 certification as to the availability of funds for those fees and any reimbursement and to
360 issue an appropriate order for their timely payment as written statements are submitted
361 by that firm. The amounts necessary to pay those fees and any reimbursement are
362 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
363 available moneys in the General Fund.
364

365 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal
366 advisor, are hereby retained. The municipal advisory services shall be in the nature of
367 financial advice and recommendations in connection with the issuance and sale of the
368 Notes. In rendering those municipal advisory services, as an independent contractor,
369 that firm shall not exercise any administrative discretion on behalf of the City in the
370 formulation of public policy, expenditure of public funds, enforcement of laws, rules and
371 regulations of the State of Ohio, the City or any other political subdivision, or the
372 execution of public trusts. That firm shall be paid just and reasonable compensation

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for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Certificate of Award, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

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

Section 17. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect 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: 9-11-2023

J. James
President of Council

[Signature]
Clerk of Council

Approved: 9-11-2023

[Signature]
Mayor

7/24/23
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The Undersigned, the duly appointed and qualified Clerk of Council of the City of Cuyahoga Falls, County of Summit, and State of Ohio does hereby certify that this is a true copy of the original ORDINANCE adopted at a meeting of Council duly held on the 11 day of September, 2023.

Dated this 12th day of September, 2023

[Signature]
Clerk of Council