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4 CITY OF CUYAHOGA FALLS, OHIO

5  
6 ORDINANCE NO. 61 -2024  
7

8 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND  
9 SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT  
10 OF \$700,000, IN ANTICIPATION OF THE ISSUANCE OF  
11 BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF  
12 THE CONSTRUCTION, RECONSTRUCTION, WIDENING,  
13 IMPROVING, GRADING, DRAINING AND RESURFACING  
14 OF WYOGA LAKE ROAD BETWEEN STEELS CORNERS  
15 ROAD AND SEASONS ROAD, TOGETHER WITH ALL  
16 RELATED AND NECESSARY APPURTENANCES  
17 THERETO, AND DECLARING AN EMERGENCY.  
18

19 WHEREAS, pursuant to Ordinance No. 91-2023 passed September 11, 2023, notes  
20 in anticipation of bonds in the amount of \$700,000 dated November 1, 2023 (the  
21 "Outstanding Notes"), were issued for the purpose stated in Section 1, as part of a  
22 consolidated issue pursuant to Section 133.30(B) of the Ohio Revised Code in the  
23 aggregate principal amount of \$2,305,000, to mature on October 31, 2024; and  
24

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

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

34 WHEREAS, the Director of Finance has certified to this Council that the estimated  
35 life or period of usefulness of the Improvement described in Section 1 is at least five (5)  
36 years, the estimated maximum maturity of the Bonds described in Section 1 is twenty  
37 (20) years, and the maximum maturity of the Notes described in Section 3, to be issued  
38 in anticipation of the Bonds, is November 1, 2043;  
39

40 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,  
41 Summit County, Ohio, that:  
42

43 Section 1. It is necessary to issue bonds of this City in the maximum principal  
44 amount of \$700,000 (the "Bonds") for the purpose of (i) paying the costs of the  
45 construction, reconstruction, widening, improving, grading, draining and resurfacing of  
46 Wyoga Lake Road between Steels Corners Road and Seasons Road, together with all  
47 related and necessary appurtenances thereto (the "Improvement") and (ii) paying  
48 capitalized interest.  
49

50 Section 2. The Bonds shall be dated approximately October 1, 2025, shall bear  
51 interest at the now estimated rate of 6.00% per year, payable on June 1 and December  
52 1 of each year, commencing June 1, 2026, until the principal amount is paid, and are  
53 estimated to mature in twenty (20) annual principal installments that are in such  
54 amounts that the total principal and interest payments on the Bonds in any fiscal year

55 in which principal is payable are not more than three times the amount of those  
56 payments in any other fiscal year. The first principal installment is estimated to be  
57 December 1, 2026.  
58

59 Section 3. It is necessary to issue and this Council determines that notes in the  
60 maximum principal amount of \$700,000 (the "Notes") shall be issued in anticipation of  
61 the issuance of the Bonds for the purpose stated in Section 1 and to retire, together  
62 with other funds available to the City, the Outstanding Notes, to pay capitalized interest  
63 and to pay any financing costs. The principal amount of Notes to be issued (not to  
64 exceed the stated maximum principal amount) shall be determined by the Director of  
65 Finance in the certificate awarding the Notes in accordance with Section 6 of this  
66 ordinance (the "Certificate of Award") as the amount which, along with other available  
67 funds of the City, is necessary to provide for the retirement of the Outstanding Notes,  
68 and capitalized interest (if any) and to pay any financing costs. The Notes shall be  
69 dated the date of issuance and shall mature not earlier than six months from that date  
70 and not later than 12 months from that date, as shall likewise be fixed by the Director  
71 of Finance in the Certificate of Award. The Notes shall bear interest at a rate or rates  
72 not to exceed 7.00% per year (computed on the basis of a 360-day year consisting of  
73 twelve 30-day months), payable at maturity and until the principal amount is paid or  
74 payment is provided for. The rate or rates of interest on the Notes shall be determined  
75 by the Director of Finance in the Certificate of Award in accordance with Section 6 of  
76 this ordinance.  
77

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

91 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the  
92 name of the City and in their official capacities, provided that one of those signatures  
93 may be a facsimile. The Notes shall be issued in the denominations and numbers as  
94 requested by the original purchaser and approved by the Director of Finance, provided  
95 that no Note shall be issued in a minimum denomination less than \$100,000 if such  
96 Notes are consolidated with any other note issue of the City pursuant to Section  
97 133.30(B) of the Ohio Revised Code and the aggregate principal amount of such  
98 consolidated issue equals or exceeds \$1,000,000. The entire principal amount may be  
99 represented by a single note and may be issued as fully registered securities (for which  
100 the Director of Finance will serve as note registrar) and in book entry or other  
101 uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio  
102 Revised Code if it is determined by the Director of Finance that issuance of fully  
103 registered securities in that form will facilitate the sale and delivery of the Notes. The  
104 Notes shall not have coupons attached, shall be numbered as determined by the  
105 Director of Finance and shall express upon their faces the purpose, in summary terms,  
106 for which they are issued and that they are issued pursuant to this ordinance. As used  
107 in this section and this ordinance:  
108

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

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

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

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

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

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

158 Section 6. The Notes shall be sold at not less than 97% of the par value thereof at  
159 private sale by the Director of Finance in accordance with law and the provisions of this  
160 ordinance, the Certificate of Award and the Note Purchase Agreement (as hereinafter  
161 defined). The Director of Finance shall, in accordance with his determination of the  
162 best interests of and financially advantageous to the City and its taxpayers and

163 conditions then existing in the financial market, consistently with the provisions of  
164 Sections 3 and 4, establish the interest rates to be borne by the Notes and their  
165 maturity, sign the Certificate of Award referred to in Sections 3 and 4 evidencing those  
166 determinations, cause the Notes to be prepared, and have the Notes signed and  
167 delivered, together with a true transcript of proceedings with reference to the issuance  
168 of the Notes, if requested by the original purchaser, to the original purchaser upon  
169 payment of the purchase price.

170  
171 The note purchase agreement (the "Note Purchase Agreement") now on file with the  
172 Clerk of Council is approved, and the Mayor and the Director of Finance are authorized  
173 to sign and deliver, on behalf of the City, the Note Purchase Agreement with such  
174 changes that are not inconsistent with the provisions of this ordinance, are not  
175 materially adverse to the interests of the City and are approved by the Mayor and the  
176 Director of Finance. Any such changes to the Note Purchase Agreement are not  
177 materially adverse to the interests of the City and are approved by the Mayor and the  
178 Director of Finance shall be evidenced conclusively by the signing of the Note Purchase  
179 Agreement by the Mayor and the Director of Finance. The Mayor, the Director of  
180 Finance, the Director of Law, the Clerk of Council and other City officials, as  
181 appropriate, and any person serving in an interim or acting capacity for any such  
182 official, are each authorized and directed to sign any transcript certificates, financial  
183 statements and other documents and instruments, including any paying agent  
184 agreement, and to take such actions as are necessary and appropriate to consummate  
185 the transactions contemplated by this ordinance. Any actions heretofore taken by the  
186 Mayor, the Director of Finance, the Director of Law, the Clerk of Council or other City  
187 official, as appropriate, in doing any and all acts necessary in connection with the  
188 issuance and sale of the Notes are hereby ratified and confirmed. The Director of  
189 Finance is authorized, if it is determined to be in the best interest of the City, to  
190 combine the issue of Notes with one or more other note issues of the City into a  
191 consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

192  
193 The Director of Finance is also hereby authorized to offer all or part of the Notes at  
194 par and any accrued interest to the Treasury Investment Board of the City for  
195 investment under Section 731.56 of the Ohio Revised Code, in accordance with law and  
196 the provisions of this ordinance if, as a result of the conditions then existing in the  
197 financial markets, the Director of Finance determines it is in the best financial interest  
198 of the City in lieu of the private sale authorized in the preceding paragraph and which  
199 determination shall be set forth in the Certificate of Award.

200  
201 Section 7. The proceeds from the sale of the Notes received by the City (or withheld  
202 by the original purchaser or deposited with the Paying Agent, in each case on behalf of  
203 the City) shall be paid into the proper fund or funds, and those proceeds are  
204 appropriated and shall be used for the purpose for which the Notes are being issued.  
205 The Certificate of Award may authorize the original purchaser to (a) withhold certain  
206 proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the  
207 Notes to the Paying Agent, in each case to provide for the payment of certain financing  
208 costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance  
209 with this Section 7, the Paying Agent shall be authorized to create a fund in accordance  
210 with the Certificate of Award for that purpose. Any portion of those proceeds received  
211 by the City (after payment of those financing costs) representing premium or accrued  
212 interest shall be paid into the Bond Retirement Fund.

213  
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  
222 issuance of the Notes. The tax shall be within the eleven-mill limitation provided by the  
223 Charter of the City, shall be and is ordered computed, certified, levied and extended  
224 upon the tax duplicate and collected by the same officers, in the same manner, and at  
225 the same time that taxes for general purposes for each of those years are certified,  
226 levied, extended and collected, and shall be placed before and in preference to all other  
227 items and for the full amount thereof. The proceeds of the tax levy shall be placed in  
228 the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt  
229 charges on the Notes or 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 Pine Ridge Incentive District Municipal Public  
233 Improvement Tax Increment Equivalent Fund created pursuant to Section 5709.43(A) of  
234 the Ohio Revised Code and Ordinance No. 115-2021 passed December 13, 2021 (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 by  
237 the amount of the Service Payments so available and appropriated.

238  
239 In each year to the extent receipts from the municipal income tax are available for  
240 the payment of the debt charges on the Notes or the Bonds and are appropriated for  
241 that purpose, and to the extent not paid from the Service Payments, the amount of the  
242 tax shall be reduced by the amount of such receipts so available and appropriated in  
243 compliance with the following covenant. To the extent necessary, the debt charges on  
244 the Notes or the Bonds shall be paid from municipal income taxes lawfully available  
245 therefor under the Constitution and the laws of the State of Ohio, and the Charter of  
246 the City; and the City hereby covenants, subject and pursuant to such authority,  
247 including particularly Section 133.05(B)(7) of the Ohio Revised Code, to appropriate  
248 annually from such municipal income taxes such amount as is necessary to meet such  
249 annual debt charges.

250  
251 Nothing in the two preceding paragraphs in any way diminishes the irrevocable  
252 pledge of the full faith and credit and general property taxing power of the City to the  
253 prompt payment of the debt charges on the Notes and the Bonds.

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

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

270 maintain books and records and make calculations and reports and (v) refrain from  
271 certain uses of those proceeds, and, as applicable, of property financed with such  
272 proceeds, all in such manner and to the extent necessary to assure such exclusion of  
273 that interest under the Code.  
274

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

299 Each covenant made in this section with respect to the Notes is also made with  
300 respect to all issues any portion of the debt service on which is paid from proceeds of  
301 the Notes (and, if different, the original issue and any refunding issues in a series of  
302 refundings), to the extent such compliance is necessary to assure exclusion of interest  
303 on the Notes from gross income for federal income tax purposes, and the officers  
304 identified above are authorized to take actions with respect to those issues as they are  
305 authorized in this section to take with respect to the Notes.  
306

307 Section 11. The Director of Finance is authorized to request a rating for the Notes  
308 from Moody's Ratings or S&P Global Ratings, or both, as the Director of Finance  
309 determines is in the best interest of the City. The expenditure of the amounts  
310 necessary to secure any such ratings as well as to pay the other financing costs (as  
311 defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is  
312 hereby authorized and approved and the amounts necessary to pay those costs are  
313 hereby appropriated from the proceeds of the Notes, if available, and otherwise from  
314 available moneys in the General Fund.  
315

316 Section 12. The Clerk of Council is directed to deliver a certified copy of this  
317 ordinance to the Fiscal Officer in Summit County.  
318

319 Section 13. This Council determines that all acts and conditions necessary to be  
320 done or performed by the City or to have been met precedent to and in the issuing of  
321 the Notes in order to make them legal, valid and binding general obligations of the City  
322 have been performed and have been met, or will at the time of delivery of the Notes have  
323 been performed and have been met, in regular and due form as required by law; that

324 the full faith and credit and general property taxing power (as described in Section 9) of  
325 the City are pledged for the timely payment of the debt charges on the Notes; and that  
326 no statutory or constitutional limitation of indebtedness or taxation will have been  
327 exceeded in the issuance of the Notes.  
328

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

350 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal  
351 advisor, are hereby retained. The municipal advisory services shall be in the nature of  
352 financial advice and recommendations in connection with the issuance and sale of the  
353 Notes. In rendering those municipal advisory services, as an independent contractor,  
354 that firm shall not exercise any administrative discretion on behalf of the City in the  
355 formulation of public policy, expenditure of public funds, enforcement of laws, rules  
356 and regulations of the State of Ohio, the City or any other political subdivision, or the  
357 execution of public trusts. That firm shall be paid just and reasonable compensation  
358 for those municipal advisory services and shall be reimbursed for the actual out-of-  
359 pocket expenses it incurs in rendering those municipal advisory services. To the extent  
360 they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the  
361 Certificate of Award, the Director of Finance is authorized and directed to make  
362 appropriate certification as to the availability of funds for those fees and any  
363 reimbursement and to issue an appropriate order for their timely payment as written  
364 statements are submitted by that firm. The amounts necessary to pay those fees and  
365 any reimbursement are hereby appropriated from the proceeds of the Notes, if available,  
366 and otherwise from available moneys in the General Fund.  
367

368 Section 16. This Council finds and determines that all formal actions of this  
369 Council and any of its committees concerning and relating to the passage of this  
370 ordinance were taken in an open meeting of this Council or any of its committees, and  
371 that all deliberations of this Council and of any of its committees that resulted in those  
372 formal actions were in meetings open to the public, all in compliance with Chapter 107  
373 of the City's Codified Ordinances.  
374


375 Section 17. This ordinance is declared to be an emergency measure necessary for  
376 the immediate preservation of the public peace, health and safety of the City, and for  
377 the further reason that this ordinance is required to be immediately effective in order to

378 issue and sell the Notes, which is necessary to enable the City to timely retire the  
379 Outstanding Notes and thereby preserve its credit; wherefore, this ordinance shall be in  
380 full force and effect immediately upon its passage and approval by the Mayor, otherwise  
381 it shall take effect and be in force at the earliest period allowed by law.  
382

383  
384 Passed: 9-9-24, 2024

  
President of Council

385  
386  
387  
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390 Approved: 9-9-2024, 2024  
391 9-3-2024

  
Clerk of Council

  
Mayor

*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 9 day of September, 2024.*

*Dated this \_\_\_ day of \_\_\_\_\_, 2024.*

\_\_\_\_\_  
*Clerk of Council*