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3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. 62 -2024
7

8
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
10 SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT
11 OF \$350,000, IN ANTICIPATION OF THE ISSUANCE OF
12 BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF
13 THE DESIGN AND ENGINEERING, CONSTRUCTION,
14 RECONSTRUCTION, WIDENING, IMPROVING, GRADING,
15 DRAINING AND RESURFACING OF, AND INSTALLATION
16 OF TRAFFIC CONTROLS ALONG, AND THE
17 INTERSECTIONS OF, STATE ROAD, SEASONS ROAD
18 AND WYOGA LAKE ROAD, AND A TRAFFIC STUDY OF
19 THOSE ROADS AND RELATED AREAS, INCLUDING BUT
20 NOT LIMITED TO THE EXTENSION, OPENING,
21 IMPROVING, CURBING OR CHANGING OF THE LINES
22 AND TRAFFIC PATTERNS OF ROADS, HIGHWAYS,
23 STREETS, INTERSECTIONS, BRIDGES (BOTH ROADWAY
24 AND PEDESTRIAN), SIDEWALKS, BIKEWAYS, MEDIANS
25 AND VIADUCTS, PROVIDING SIGNAGE, LIGHTING
26 SYSTEMS, SIGNALIZATION, AND INSTALLATION OF
27 STORMWATER AND FLOOD REMEDIATION FACILITIES,
28 TOGETHER WITH ALL RELATED AND NECESSARY
29 APPURTENANCES THERETO, AND DECLARING AN
30 EMERGENCY.
31

32
33 WHEREAS, pursuant to Ordinance No. 92-2023 passed September 11, 2023, notes
34 in anticipation of bonds in the amount of \$350,000 dated November 1, 2023 (the
35 "Outstanding Notes"), were issued for the purpose stated in Section 1, as part of a
36 consolidated issue pursuant to Section 133.30(B) of the Ohio Revised Code in the
37 aggregate principal amount of \$2,305,000, to mature on October 31, 2024; and
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39 WHEREAS, this Council finds and determines that the City should retire the
40 Outstanding Notes with the proceeds of the Notes described in Section 3 and other
41 funds available to the City; and
42

43 WHEREAS, this Council has requested that the Director of Finance, as fiscal officer
44 of this City, certify the estimated life or period of usefulness of the Improvement
45 described in Section 1, the estimated maximum maturity of the Bonds described in
46 Section 1 and the maximum maturity of the Notes described in Section 3; and
47

48 WHEREAS, the Director of Finance has certified to this Council that the estimated
49 life or period of usefulness of the Improvement described in Section 1 is at least five (5)
50 years, the estimated maximum maturity of the Bonds described in Section 1 is twenty
51 (20) years, and the maximum maturity of the Notes described in Section 3, to be issued
52 in anticipation of the Bonds, is November 1, 2043;
53

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

57 Section 1. It is necessary to issue bonds of this City in the maximum principal
58 amount of \$350,000 (the "Bonds") for the purpose of (i) paying the costs of the design
59 and engineering, construction, reconstruction, widening, improving, grading, draining
60 and resurfacing of, and installation of traffic controls along, and the intersections of,
61 State Road, Seasons Road and Wyoga Lake Road, and a traffic study of those roads and
62 related areas, including but not limited to the extension, opening, improving, curbing or
63 changing of the lines and traffic patterns of roads, highways, streets, intersections,
64 bridges (both roadway and pedestrian), sidewalks, bikeways, medians and viaducts,
65 providing signage, lighting systems, signalization, and installation of stormwater and
66 flood remediation facilities, together with all related and necessary appurtenances
67 thereto (the "Improvement") and (ii) paying capitalized interest.
68

69 Section 2. The Bonds shall be dated approximately October 1, 2025, shall bear
70 interest at the now estimated rate of 6.00% per year, payable on June 1 and December
71 1 of each year, commencing June 1, 2026, until the principal amount is paid, and are
72 estimated to mature in twenty (20) annual principal installments that are in such
73 amounts that the total principal and interest payments on the Bonds in any fiscal year
74 in which principal is payable are not more than three times the amount of those
75 payments in any other fiscal year. The first principal installment is estimated to be
76 December 1, 2026.
77

78 Section 3. It is necessary to issue and this Council determines that notes in the
79 maximum principal amount of \$350,000 (the "Notes") shall be issued in anticipation of
80 the issuance of the Bonds for the purpose stated in Section 1 and to retire, together
81 with other funds available to the City, the Outstanding Notes, to pay capitalized interest
82 and to pay any financing costs. The principal amount of Notes to be issued (not to
83 exceed the stated maximum principal amount) shall be determined by the Director of
84 Finance in the certificate awarding the Notes in accordance with Section 6 of this
85 ordinance (the "Certificate of Award") as the amount which, along with other available
86 funds of the City, is necessary to provide for the retirement of the Outstanding Notes,
87 and capitalized interest (if any) and to pay any financing costs. The Notes shall be
88 dated the date of issuance and shall mature not earlier than six months from that date
89 and not later than 12 months from that date, as shall likewise be fixed by the Director
90 of Finance in the Certificate of Award. The Notes shall bear interest at a rate or rates
91 not to exceed 7.00% per year (computed on the basis of a 360-day year consisting of
92 twelve 30-day months), payable at maturity and until the principal amount is paid or
93 payment is provided for. The rate or rates of interest on the Notes shall be determined
94 by the Director of Finance in the Certificate of Award in accordance with Section 6 of
95 this ordinance.
96

97 Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds
98 of the United States of America, and shall be payable, without deduction for services of
99 the City's paying agent, at the designated corporate trust office of The Huntington
100 National Bank or at the office of a bank or trust company designated by the Director of
101 Finance in the Certificate of Award after determining that the payment at that bank or
102 trust company will not endanger the funds or securities of the City and that proper
103 procedures and safeguards are available for that purpose or at the office of the Director
104 of Finance if agreed to by the Director of Finance and the original purchaser (the
105 "Paying Agent"). The Director of Finance is authorized, to the extent necessary or
106 appropriate, to enter into an agreement with the Paying Agent in connection with the

107 services to be provided by the Paying Agent after determining that the signing thereof
108 will not endanger the funds or securities of the City.
109

110 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the
111 name of the City and in their official capacities, provided that one of those signatures
112 may be a facsimile. The Notes shall be issued in the denominations and numbers as
113 requested by the original purchaser and approved by the Director of Finance, provided
114 that no Note shall be issued in a minimum denomination less than \$100,000 if such
115 Notes are consolidated with any other note issue of the City pursuant to Section
116 133.30(B) of the Ohio Revised Code and the aggregate principal amount of such
117 consolidated issue equals or exceeds \$1,000,000. The entire principal amount may be
118 represented by a single note and may be issued as fully registered securities (for which
119 the Director of Finance will serve as note registrar) and in book entry or other
120 uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio
121 Revised Code if it is determined by the Director of Finance that issuance of fully
122 registered securities in that form will facilitate the sale and delivery of the Notes. The
123 Notes shall not have coupons attached, shall be numbered as determined by the
124 Director of Finance and shall express upon their faces the purpose, in summary terms,
125 for which they are issued and that they are issued pursuant to this ordinance. As used
126 in this section and this ordinance:
127

128 “Book entry form” or “book entry system” means a form or system under which (a)
129 the ownership of beneficial interests in the Notes and the principal of and interest on
130 the Notes may be transferred only through a book entry, and (b) a single physical Note
131 certificate in fully registered form is issued by the City and payable only to a Depository
132 or its nominee as registered owner, with the certificate deposited with and “immobilized”
133 in the custody of the Depository or its designated agent for that purpose. The book
134 entry maintained by others than the City is the record that identifies the owners of
135 beneficial interests in the Notes and that principal and interest.
136

137 “Depository” means any securities depository that is a clearing agency registered
138 pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934,
139 operating and maintaining, with its Participants or otherwise, a book entry system to
140 record ownership of beneficial interests in the Notes or the principal of and interest on
141 the Notes, and to effect transfers of the Notes, in book entry form, and includes and
142 means initially The Depository Trust Company (a limited purpose trust company), New
143 York, New York.
144

145 “Participant” means any participant contracting with a Depository under a book
146 entry system and includes securities brokers and dealers, banks and trust companies
147 and clearing corporations.
148

149 The Notes may be issued to a Depository for use in a book entry system and, if and
150 as long as a book entry system is utilized, (a) the Notes may be issued in the form of a
151 single Note made payable to the Depository or its nominee and immobilized in the
152 custody of the Depository or its agent for that purpose; (b) the beneficial owners in book
153 entry form shall have no right to receive the Notes in the form of physical securities or
154 certificates; (c) ownership of beneficial interests in book entry form shall be shown by
155 book entry on the system maintained and operated by the Depository and its
156 Participants, and transfers of the ownership of beneficial interests shall be made only
157 by book entry by the Depository and its Participants; and (d) the Notes as such shall
158 not be transferable or exchangeable, except for transfer to another Depository or to
159 another nominee of a Depository, without further action by the City.
160

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

171
172 The Director of Finance is also hereby authorized and directed, to the extent
173 necessary or required, to enter into any agreements determined necessary in connection
174 with the book entry system for the Notes, after determining that the signing thereof will
175 not endanger the funds or securities of the City.

176
177 Section 6. The Notes shall be sold at not less than 97% of the par value thereof at
178 private sale by the Director of Finance in accordance with law and the provisions of this
179 ordinance, the Certificate of Award and the Note Purchase Agreement (as hereinafter
180 defined). The Director of Finance shall, in accordance with his determination of the
181 best interests of and financially advantageous to the City and its taxpayers and
182 conditions then existing in the financial market, consistently with the provisions of
183 Sections 3 and 4, establish the interest rates to be borne by the Notes and their
184 maturity, sign the Certificate of Award referred to in Sections 3 and 4 evidencing those
185 determinations, cause the Notes to be prepared, and have the Notes signed and
186 delivered, together with a true transcript of proceedings with reference to the issuance
187 of the Notes, if requested by the original purchaser, to the original purchaser upon
188 payment of the purchase price.

189
190 The note purchase agreement (the "Note Purchase Agreement") now on file with the
191 Clerk of Council is approved, and the Mayor and the Director of Finance are authorized
192 to sign and deliver, on behalf of the City, the Note Purchase Agreement with such
193 changes that are not inconsistent with the provisions of this ordinance, are not
194 materially adverse to the interests of the City and are approved by the Mayor and the
195 Director of Finance. Any such changes to the Note Purchase Agreement are not
196 materially adverse to the interests of the City and are approved by the Mayor and the
197 Director of Finance shall be evidenced conclusively by the signing of the Note Purchase
198 Agreement by the Mayor and the Director of Finance. The Mayor, the Director of
199 Finance, the Director of Law, the Clerk of Council and other City officials, as
200 appropriate, and any person serving in an interim or acting capacity for any such
201 official, are each authorized and directed to sign any transcript certificates, financial
202 statements and other documents and instruments, including any paying agent
203 agreement, and to take such actions as are necessary and appropriate to consummate
204 the transactions contemplated by this ordinance. Any actions heretofore taken by the
205 Mayor, the Director of Finance, the Director of Law, the Clerk of Council or other City
206 official, as appropriate, in doing any and all acts necessary in connection with the
207 issuance and sale of the Notes are hereby ratified and confirmed. The Director of
208 Finance is authorized, if it is determined to be in the best interest of the City, to
209 combine the issue of Notes with one or more other note issues of the City into a
210 consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

211
212 The Director of Finance is also hereby authorized to offer all or part of the Notes at
213 par and any accrued interest to the Treasury Investment Board of the City for
214 investment under Section 731.56 of the Ohio Revised Code, in accordance with law and

215 the provisions of this ordinance if, as a result of the conditions then existing in the
216 financial markets, the Director of Finance determines it is in the best financial interest
217 of the City in lieu of the private sale authorized in the preceding paragraph and which
218 determination shall be set forth in the Certificate of Award.
219

220 Section 7. The proceeds from the sale of the Notes received by the City (or withheld
221 by the original purchaser or deposited with the Paying Agent, in each case on behalf of
222 the City) shall be paid into the proper fund or funds, and those proceeds are
223 appropriated and shall be used for the purpose for which the Notes are being issued.
224 The Certificate of Award may authorize the original purchaser to (a) withhold certain
225 proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the
226 Notes to the Paying Agent, in each case to provide for the payment of certain financing
227 costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance
228 with this Section 7, the Paying Agent shall be authorized to create a fund in accordance
229 with the Certificate of Award for that purpose. Any portion of those proceeds received
230 by the City (after payment of those financing costs) representing premium or accrued
231 interest shall be paid into the Bond Retirement Fund.
232

233 Section 8. The par value to be received from the sale of the Bonds or of any renewal
234 notes and any excess funds resulting from the issuance of the Notes shall, to the extent
235 necessary, be used to pay the debt charges on the Notes at maturity and are pledged for
236 that purpose.
237

238 Section 9. During the year or years in which the Notes are outstanding, there shall
239 be levied on all the taxable property in the City, in addition to all other taxes, the same
240 tax that would have been levied if the Bonds had been issued without the prior
241 issuance of the Notes. The tax shall be within the eleven-mill limitation provided by the
242 Charter of the City, shall be and is ordered computed, certified, levied and extended
243 upon the tax duplicate and collected by the same officers, in the same manner, and at
244 the same time that taxes for general purposes for each of those years are certified,
245 levied, extended and collected, and shall be placed before and in preference to all other
246 items and for the full amount thereof. The proceeds of the tax levy shall be placed in
247 the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt
248 charges on the Notes or the Bonds when and as the same fall due.
249

250 In each year to the extent the service payments in lieu of real property taxes (the
251 "Service Payments") deposited into the Pine Ridge Incentive District Municipal Public
252 Improvement Tax Increment Equivalent Fund created pursuant to Section 5709.43(A)
253 of the Ohio Revised Code and Ordinance No. 115-2021 passed December 13, 2021 (the
254 "TIF Ordinance") are available for the payment of the debt charges on the Notes or the
255 Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by
256 the amount of the Service Payments so available and appropriated.
257

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

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

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

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

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

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

323 identified above are authorized to take actions with respect to those issues as they are
324 authorized in this section to take with respect to the Notes.
325

326 Section 11. The Director of Finance is authorized to request a rating for the Notes
327 from Moody's Ratings or S&P Global Ratings, or both, as the Director of Finance
328 determines is in the best interest of the City. The expenditure of the amounts
329 necessary to secure any such ratings as well as to pay the other financing costs (as
330 defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is
331 hereby authorized and approved and the amounts necessary to pay those costs are
332 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
333 available moneys in the General Fund.
334

335 Section 12. The Clerk of Council is directed to deliver a certified copy of this
336 ordinance to the Fiscal Officer in Summit County.
337

338 Section 13. This Council determines that all acts and conditions necessary to be
339 done or performed by the City or to have been met precedent to and in the issuing of
340 the Notes in order to make them legal, valid and binding general obligations of the City
341 have been performed and have been met, or will at the time of delivery of the Notes have
342 been performed and have been met, in regular and due form as required by law; that
343 the full faith and credit and general property taxing power (as described in Section 9) of
344 the City are pledged for the timely payment of the debt charges on the Notes; and that
345 no statutory or constitutional limitation of indebtedness or taxation will have been
346 exceeded in the issuance of the Notes.
347

348 Section 14. The legal services of the law firm of Squire Patton Boggs (US) LLP are
349 hereby retained. Those legal services shall be in the nature of legal advice and
350 recommendations as to the documents and the proceedings in connection with the
351 authorization, sale and issuance of the Notes and securities issued in renewal of the
352 Notes and rendering at delivery related legal opinions, all as set forth in the form of
353 engagement letter from that firm which is now on file in the office of the Clerk of
354 Council. In providing those legal services, as an independent contractor and in an
355 attorney-client relationship, that firm shall not exercise any administrative discretion
356 on behalf of this City in the formulation of public policy, expenditure of public funds,
357 enforcement of laws, rules and regulations of the State of Ohio, any county or municipal
358 corporation or of this City, or the execution of public trusts. For those legal services,
359 that firm shall be paid just and reasonable compensation and shall be reimbursed for
360 actual out-of-pocket expenses incurred in providing those legal services. To the extent
361 they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the
362 Certificate of Award, the Director of Finance is authorized and directed to make
363 appropriate certification as to the availability of funds for those fees and any
364 reimbursement and to issue an appropriate order for their timely payment as written
365 statements are submitted by that firm. The amounts necessary to pay those fees and
366 any reimbursement are hereby appropriated from the proceeds of the Notes, if available,
367 and otherwise from available moneys in the General Fund.
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369 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal
370 advisor, are hereby retained. The municipal advisory services shall be in the nature of
371 financial advice and recommendations in connection with the issuance and sale of the
372 Notes. In rendering those municipal advisory services, as an independent contractor,
373 that firm shall not exercise any administrative discretion on behalf of the City in the
374 formulation of public policy, expenditure of public funds, enforcement of laws, rules
375 and regulations of the State of Ohio, the City or any other political subdivision, or the
376 execution of public trusts. That firm shall be paid just and reasonable compensation

377 for those municipal advisory services and shall be reimbursed for the actual out-of-
378 pocket expenses it incurs in rendering those municipal advisory services. To the extent
379 they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the
380 Certificate of Award, the Director of Finance is authorized and directed to make
381 appropriate certification as to the availability of funds for those fees and any
382 reimbursement and to issue an appropriate order for their timely payment as written
383 statements are submitted by that firm. The amounts necessary to pay those fees and
384 any reimbursement are hereby appropriated from the proceeds of the Notes, if available,
385 and otherwise from available moneys in the General Fund.
386

387 Section 16. This Council finds and determines that all formal actions of this
388 Council and any of its committees concerning and relating to the passage of this
389 ordinance were taken in an open meeting of this Council or any of its committees, and
390 that all deliberations of this Council and of any of its committees that resulted in those
391 formal actions were in meetings open to the public, all in compliance with Chapter 107
392 of the City's Codified Ordinances.
393

394 Section 17. This ordinance is declared to be an emergency measure necessary for
395 the immediate preservation of the public peace, health and safety of the City, and for
396 the further reason that this ordinance is required to be immediately effective in order to
397 issue and sell the Notes, which is necessary to enable the City to timely retire the
398 Outstanding Notes and thereby preserve its credit; wherefore, this ordinance shall be in
399 full force and effect immediately upon its passage and approval by the Mayor, otherwise
400 it shall take effect and be in force at the earliest period allowed by law.
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403 Passed: 9-9-24, 2024

J. James

President of Council

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409 Approved: 9-9-2024, 2024
410 9-3-2024

[Signature]

Clerk of Council
[Signature]

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