

## NEW LEGISLATION

October 28, 2013

<b>Temp. No.</b>	<b>Introduced</b>	<b>Committee</b>	<b>Description</b>
B-75	10/28/13	Fin	An ordinance providing for the issuance and sale of notes in the principal amount of \$6,000,000, in anticipation of the issuance of bonds, for the purpose of paying a portion of the costs of constructing a community recreation center and acquiring real estate and interests in real estate therefor, and declaring an emergency.
B-76	10/28/13	Fin	An ordinance providing for the issuance and sale of notes in the principal amount of \$750,000 in anticipation of the issuance of bonds, for the purpose of constructing improvements to portions of State Road and Portage Trail, including, where necessary, constructing or replacing sidewalks and curbs, installing water and sewer lines, constructing turning lanes, installing traffic signals and lighting, and all related improvements, and declaring an emergency.
B-77	10/28/13	Fin	An ordinance providing for the issuance and sale of notes in the principal amount of \$725,000, in anticipation of the issuance of bonds, for the purpose of paying costs of constructing waterlines in Graham Road, together with all appurtenances thereto, and declaring an emergency.

## CALENDAR

October 28, 2013

The following legislation will be up for passage at the Council Meeting on October 28, 2013.

<b>Temp. No.</b>	<b>Introduced</b>	<b>Committee</b>	<b>Description</b>
B-72	9/23/13	PA	An ordinance approving the application of Portage Crossing, LLC for the designation of a Community Entertainment District at the Portage Crossing Redevelopment Site, making certain findings in connection therewith, and declaring an emergency.
B-74	10/21/13	Fin	A resolution accepting the amounts and rates of taxation as certified by the Summit County Budget Commission, authorizing the necessary tax levies, certifying such authorization to the County Fiscal Officer, and declaring an emergency.

## PENDING LEGISLATION

October 28, 2013

<b>Temp. No.</b>	<b>Introduced</b>	<b>Committee</b>	<b>Description</b>
B-51	7/8/13	PA	A resolution approving an amendment to the Summit County 9-1-1 Plan to include the Southwest Summit Council of Governments as a public safety answering point, and declaring an emergency.
B-55	7/22/13	PA	An ordinance amending Section 131.01 of Title Five, Part One of the Codified Ordinances, relating to authorized staffing of the Fire Department, and declaring an emergency.
B-64*	9/23/13	PZ	An ordinance designating a Revitalization Signage Area for the Portage Crossing Redevelopment Site consisting of Parcel Nos. 02-05240, 02-05241, 02-14014, 02-01811, 02-18517, 02-18768, 02-18769, 02-20436, 02-20437, 02-20439 and 02-02885, authorizing a corresponding amendment of the City's official zone maps, making certain findings in connection therewith, and declaring an emergency.
B-72	9/23/13	PA	An ordinance approving the application of Portage Crossing, LLC for the designation of a Community Entertainment District at the Portage Crossing Redevelopment Site, making certain findings in connection therewith, and declaring an emergency.
B-74	10/21/13	Fin	A resolution accepting the amounts and rates of taxation as certified by the Summit County Budget Commission, authorizing the necessary tax levies, certifying such authorization to the County Fiscal Officer, and declaring an emergency.

\*Public Hearing 11/4/13

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3  
4 CITY OF CUYAHOGA FALLS, OHIO

5  
6 ORDINANCE NO. -2013

7  
8  
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE  
10 AND SALE OF NOTES IN THE PRINCIPAL AMOUNT  
11 OF \$6,000,000, IN ANTICIPATION OF THE ISSUANCE  
12 OF BONDS, FOR THE PURPOSE OF PAYING A  
13 PORTION OF THE COSTS OF CONSTRUCTING A  
14 COMMUNITY RECREATION CENTER AND  
15 ACQUIRING REAL ESTATE AND INTERESTS IN REAL  
16 ESTATE THEREFOR, AND DECLARING AN  
17 EMERGENCY.  
18

19  
20 WHEREAS, pursuant to Ordinance No. 82-2012 passed October 8, 2012,  
21 notes in anticipation of bonds in the amount of \$7,000,000 dated December 5,  
22 2012 (the Outstanding Notes), were issued for the purpose stated in Section 1 (the  
23 Project), as part of a consolidated issue pursuant to Section 133.30(B) of the  
24 Revised Code in the principal amount of \$8,400,000, to mature on December 5,  
25 2013; 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  
29 other funds available to the City; and  
30

31 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to  
32 this Council that the estimated life or period of usefulness of the improvement  
33 described in Section 1 is at least five years, the estimated maximum maturity of  
34 the bonds described in Section 1 is 23 years, as the Project costs funded by the  
35 Notes are allocated entirely to building costs, and the maximum maturity of the  
36 notes described in Section 3, to be issued in anticipation of the bonds, is  
37 December 18, 2022;  
38

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

42 Section 1. It is necessary to issue bonds of this City in the principal amount of  
43 \$6,000,000 (the Bonds) for the purpose of paying a portion of the costs of  
44 constructing a community recreation center and acquiring real estate and  
45 interests in real estate therefor.  
46

47 Section 2. The Bonds shall be dated approximately December 1, 2014, shall  
48 bear interest at the now estimated rate of 5.5% per year, payable on June 1 and  
49 December 1 of each year, commencing June 1, 2015, until the principal amount  
50 is paid, and are estimated to mature in twenty-three annual principal  
51 installments that are in such amounts that the total principal and interest  
52 payments on the Bonds in any fiscal year in which principal is payable are not

53 more than three times the amount of those payments in any other fiscal year.  
54 The first principal installment is estimated to be December 1, 2015.  
55

56 Section 3. It is necessary to issue and this Council determines that notes in  
57 the aggregate principal amount of \$6,000,000 (the Notes) shall be issued in  
58 anticipation of the issuance of the Bonds and to retire, together with other funds  
59 available to the City, the Outstanding Notes. The Notes shall bear interest at a  
60 rate or rates not to exceed 6.0% per year (computed on the basis of a 360-day  
61 year consisting of twelve 30-day months), payable at maturity and until the  
62 principal amount is paid or payment is provided for. The rate or rates of interest  
63 on the Notes shall be determined by the Director of Finance in the certificate  
64 awarding the Notes (the "Certificate of Award") in accordance with Section 6 of  
65 this ordinance.  
66

67 Section 4. The debt charges on the Notes shall be payable in Federal Reserve  
68 funds of the United States of America, and shall be payable, without deduction for  
69 services of the City's paying agent, at the principal corporate trust office of The  
70 Huntington National Bank, Columbus, Ohio or at the office of a bank or trust  
71 company designated by the Director of Finance in the Certificate of Award after  
72 determining that the payment at that bank or trust company will not endanger  
73 the funds or securities of the City and that proper procedures and safeguards are  
74 available for that purpose or at the office of the Director of Finance if agreed to by  
75 the Director of Finance and the Original Purchaser (the Paying Agent). The Notes  
76 shall be dated the date of issuance and shall mature not earlier than six months  
77 from that date and not later than twelve months from that date, as shall likewise  
78 be fixed by the Director of Finance in the Certificate of Award.  
79

80 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in  
81 the name of the City and in their official capacities, provided that one of those  
82 signatures may be a facsimile. The Notes shall be issued in the denominations  
83 and numbers as requested by the Original Purchaser, as described in Section 6  
84 hereof, and approved by the Director of Finance, provided that unless the City  
85 distributes an official statement, as described in Section 6 hereof, no Note shall be  
86 issued in a denomination less than \$100,000. The entire principal amount may  
87 be represented by a single note and may be issued as fully registered securities  
88 (for which the Director of Finance will serve as note registrar) and in book entry or  
89 other uncertificated form in accordance with Section 9.96 and Chapter 133 of the  
90 Revised Code if it is determined by the Director of Finance that issuance of fully  
91 registered securities in that form will facilitate the sale and delivery of the Notes.  
92 The Notes shall not have coupons attached, shall be numbered as determined by  
93 the Director of Finance and shall express upon their faces the purpose, in  
94 summary terms, for which they are issued and that they are issued pursuant to  
95 this Ordinance. As used in this section and this ordinance:  
96

97 "Book entry form" or "book entry system" means a form or system under  
98 which (i) the ownership of beneficial interests in the Notes and the principal of,  
99 and interest on, the Notes may be transferred only through a book entry, and (ii) a  
100 single physical Note certificate is issued by the City and payable only to a  
101 Depository or its nominee, with such Notes "immobilized" in the custody of the  
102 Depository or its agent for that purpose. The book entry maintained by others  
103 than the City is the record that identifies the owners of beneficial interests in the  
104 Notes and that principal and interest.  
105

106 “Depository” means any securities depository that is a clearing agency under  
107 federal law operating and maintaining, with its Participants or otherwise, a book  
108 entry system to record ownership of beneficial interests in the Notes or the  
109 principal of, and interest on, the Notes and to effect transfers of the Notes, in book  
110 entry form, and includes and means initially The Depository Trust Company (a  
111 limited purpose trust company), New York, New York.

112  
113 “Participant” means any participant contracting with a Depository under a  
114 book entry system and includes security brokers and dealers, banks and trust  
115 companies, and clearing corporations.

116  
117 The Notes may be issued to a Depository for use in a book entry system and, if  
118 and as long as a book entry system is utilized, (i) the Notes may be issued in the  
119 form of a single Note made payable to the Depository or its nominee and  
120 immobilized in the custody of the Depository or its agent for that purpose; (ii) the  
121 beneficial owners in book entry form shall have no right to receive the Notes in the  
122 form of physical securities or certificates; (iii) ownership of beneficial interests in  
123 book entry form shall be shown by book entry on the system maintained and  
124 operated by the Depository and its Participants, and transfers of the ownership of  
125 beneficial interests shall be made only by book entry by the Depository and its  
126 Participants; and (iv) the Notes as such shall not be transferable or exchangeable,  
127 except for transfer to another Depository or to another nominee of a Depository,  
128 without further action by the City.

129  
130 If any Depository determines not to continue to act as a Depository for the  
131 Notes for use in a book entry system, the Director of Finance may attempt to  
132 establish a securities depository/book entry relationship with another qualified  
133 Depository. If the Director of Finance does not or is unable to do so, the Director  
134 of Finance, after making provision for notification of the beneficial owners by the  
135 then Depository and any other arrangements deemed necessary, shall permit  
136 withdrawal of the Notes from the Depository, and shall cause the Notes in bearer  
137 or payable form to be signed by the officers authorized to sign the Notes and  
138 delivered to the assigns of the Depository or its nominee, all at the cost and  
139 expense (including any costs of printing), if the event is not the result of City  
140 action or inaction, of those persons requesting such issuance.

141  
142 The Director of Finance is also hereby authorized and directed, to the extent  
143 necessary or required, to enter into any agreements determined necessary in  
144 connection with the book entry system for the Notes, after determining that the  
145 signing thereof will not endanger the funds or securities of the City.

146  
147 Section 6. The Notes shall be sold at not less than 97% of the par value  
148 thereof at private sale by the Director of Finance in accordance with law and the  
149 provisions of this ordinance. The Director of Finance shall, in accordance with his  
150 determination of the best interests of and financial advantages to the City and its  
151 taxpayers and conditions then existing in the financial market, consistently with  
152 the provisions of Sections 3 and 4, establish the interest rates to be borne by the  
153 Notes and their maturity, sign the Certificate of Award referred to in Sections 3  
154 and 4 evidencing those determinations, cause the Notes to be prepared, and have  
155 the Notes, signed and delivered, together with a true transcript of proceedings  
156 with reference to the issuance of the Notes, if requested by the Original Purchaser  
157 or Purchasers (collectively, the “Original Purchaser”), to the Original Purchaser  
158 upon payment of the purchase price. The Mayor and the Director of Finance are

159 also authorized, if requested by the Original Purchaser as a condition of such  
160 sale, to execute, on behalf of the City, a Note Purchase Agreement between the  
161 City and such Original Purchaser relating to the sale of such Notes, or the sale of  
162 any consolidated issue of which the Notes are a part, substantially in the form  
163 now on file with the Clerk of Council in Council File No. \_\_\_\_\_, which Note  
164 Purchase Agreement is hereby approved, together with any changes or  
165 amendments not inconsistent with this ordinance and not substantially adverse  
166 to the City and that are approved by the Mayor and the Director of Finance on  
167 behalf of the City, all of which shall be conclusively evidenced by the signing of the  
168 Note Purchase Agreement or any amendments thereto by the Mayor and the  
169 Director of Finance. The Mayor, the Director of Finance, the Clerk of Council and  
170 other City officials, as appropriate, are each authorized and directed to sign any  
171 transcript certificates, financial statements, continuing disclosure agreement and  
172 other documents and instruments and to take such actions as are necessary and  
173 appropriate to consummate the transactions contemplated by this ordinance.  
174 The Director of Finance is authorized, if it is determined to be in the best interest  
175 of the City, to combine the issue of Notes with one or more other note issues of the  
176 City into a consolidated note issue pursuant to Section 133.30(B) of the Revised  
177 Code.

178  
179 The Director of Finance is hereby authorized to offer all or part of the Notes at  
180 par and any accrued interest to the Treasury Investment Board of the City for  
181 investment under Section 731.56 of the Revised Code, in accordance with law and  
182 the provisions of this ordinance if, as a result of the conditions then existing in the  
183 financial markets, the Director of Finance determines it is in the best financial  
184 interest of the City in lieu of the private sale authorized in the preceding  
185 paragraph.

186  
187 If the Mayor or the Director of Finance determines it to be in the best interests  
188 of and financially advantageous to the City, either or both of those officers are  
189 authorized, on behalf of the City, to apply for a rating on the Notes from one or  
190 more nationally-recognized rating organizations.

191  
192 If in the judgment of the Mayor or the Director of Finance a disclosure  
193 document in the form of an official statement (including within such term, but not  
194 limited to, an annual information statement) is appropriate or necessary relating  
195 to the original issuance of the Notes, either or both of those officers, on behalf of  
196 the City and in their official capacities, are authorized to (i) prepare or cause to be  
197 prepared, and make or authorize modifications, completions or changes of or  
198 supplements to, such an official statement, (ii) determine, and to certify or  
199 otherwise represent, when the official statement is to be "deemed final" (except for  
200 permitted omissions) by the City as of its date or is a final official statement for  
201 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or  
202 authorize the use and distribution of those official statements and any  
203 supplements thereto in connection with the original issuance of the Notes, and  
204 (iv) complete and sign those official statements as so approved together with such  
205 certificates, statements or other documents in connection with the finality,  
206 accuracy and completeness of those official statements.

207  
208 As used in this Section and this ordinance:  
209

210 “Note proceedings” means, collectively, this ordinance and the other  
211 proceedings of the City, including the Notes, that collectively provide for, among  
212 other things, the rights of holders and beneficial owners of the Notes.  
213

214 “Rule” means Rule 15c2-12 prescribed by the Securities and Exchange  
215 Commission pursuant to the Securities Exchange Act of 1934.  
216

217 “Specified Events” means the occurrence of any of the following events, within  
218 the meaning of the Rule, with respect to the Notes as applicable: principal and  
219 interest payment delinquencies; non-payment related defaults; unscheduled  
220 draws on debt service reserves reflecting financial difficulties; unscheduled draws  
221 on credit enhancements reflecting financial difficulties; substitution of credit or  
222 liquidity providers, or their failure to perform; adverse tax opinions or events  
223 affecting the tax-exempt status of the Notes; modifications to rights of holders or  
224 beneficial owners of the Notes; Note calls; defeasances; release, substitution or  
225 sale of property securing repayment of the Notes; and rating changes. The City  
226 has not obtained or provided, and does not expect to obtain or provide, any debt  
227 service reserves, credit enhancements or credit or liquidity providers for the Notes,  
228 the Notes are not subject to call for redemption prior to maturity, and repayment  
229 of the Notes is not secured by a lien on any property capable of release or sale or  
230 for which other property may be substituted.  
231

232 If the City prepares and causes the distribution of an official statement for the  
233 Notes, for the benefit of the holders and beneficial owners from time to time of the  
234 Notes, the City agrees, as the only obligated person with respect to the Notes  
235 under the Rule, to provide or cause to be provided such notices, in such manner,  
236 as may be required for purposes of paragraph (b)(5)(i)(C) of the Rule, including  
237 specifically notice to the Municipal Securities Rulemaking Board (MSRB) through  
238 its Electronic Municipal Market Access (EMMA) system, in a timely manner, of the  
239 occurrence of any Specified Event, if that event is material. (The City’s agreement  
240 in this paragraph is herein referred to as the Continuing Disclosure Agreement).  
241

242 The Director of Finance is further authorized and directed to establish  
243 procedures to ensure compliance by the City with the Continuing Disclosure  
244 Agreement, including timely provision of notices as described above. Prior to  
245 providing notice of the occurrence of any Specified Event or of any other events,  
246 the Director of Finance shall consult with and obtain legal advice from, as  
247 appropriate, the Director of Law and bond or other qualified independent special  
248 counsel selected by the City. The Director of Finance, acting in the name and on  
249 behalf of the City, shall be entitled to rely upon any such legal advice in  
250 determining whether a notice should be provided.  
251

252 The City reserves the right to amend the Continuing Disclosure Agreement,  
253 and to obtain the waiver of noncompliance with any provision of that Agreement,  
254 as may be necessary or appropriate to achieve its compliance with any applicable  
255 federal securities law or rule, to cure any ambiguity, inconsistency or formal  
256 defect or omission, and to address any change in circumstances arising from a  
257 change in legal requirements, change in law, or change in the identity, nature or  
258 status of the City, or type of business conducted by the City. Any such  
259 amendment or waiver will not be effective unless the Agreement (as amended or  
260 taking into account such waiver) would have complied with the requirements of  
261 the Rule at the time of the primary offering of the Notes, after taking into account  
262 any applicable amendments to or official interpretations of the Rule, as well as



263 any change in circumstances, and until the City shall have received: either (i) a  
264 written opinion of bond or other qualified independent special counsel selected by  
265 the City that the amendment or waiver would not materially impair the interests  
266 of holders or beneficial owners of the Notes or (ii) the written consent to the  
267 amendment or waiver of the holders of at least a majority of the principal amount  
268 of the Notes then outstanding.  
269

270 The Continuing Disclosure Agreement shall be solely for the benefit of the  
271 holders and beneficial owners from time to time of the Notes. The exclusive  
272 remedy for any breach of the Agreement by the City shall be limited, to the extent  
273 permitted by law, to a right of holders and beneficial owners to institute and  
274 maintain, or to cause to be instituted and maintained, such proceedings as may  
275 be authorized at law or in equity to obtain the specific performance by the City of  
276 its obligations under the Agreement. Any individual holder or beneficial owner  
277 may institute and maintain, or cause to be instituted and maintained, such  
278 proceedings to require the City to provide or cause to be provided a pertinent filing  
279 if such a filing is due and has not been made. Any such proceedings to require  
280 the City to perform any other obligation under the Agreement (including any  
281 proceedings that contest the sufficiency of any pertinent filing) shall be instituted  
282 and maintained only (i) by a trustee appointed by the holders and beneficial  
283 owners of not less than 25% in principal amount of the Notes then outstanding or  
284 (ii) by holders and beneficial owners of not less than 10% in principal amount of  
285 the Notes then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1) of  
286 the Revised Code, as applicable (or any like or comparable successor provisions).  
287

288 The performance by the City of the Continuing Disclosure Agreement shall be  
289 subject to the annual appropriation of any funds that may be necessary to  
290 perform it.  
291

292 The Continuing Disclosure Agreement shall remain in effect only for such  
293 period that the Notes are outstanding in accordance with their terms and the City  
294 remains an obligated person with respect to the Notes within the meaning of the  
295 Rule. The obligation of the City to provide the notices of the Specified Events shall  
296 terminate, if and when the City no longer remains such an obligated person.  
297

298 Section 7. The proceeds from the sale of the Notes, except any premium and  
299 accrued interest, shall be paid into the proper fund or funds and those proceeds  
300 are appropriated and shall be used for the purpose for which the Notes are being  
301 issued. Any portion of those proceeds representing premium and accrued interest  
302 shall be paid into the Bond Retirement Fund.  
303

304 Section 8. The par value to be received from the sale of the Bonds or of any  
305 renewal notes and any excess funds resulting from the issuance of the Notes  
306 shall, to the extent necessary, be used to pay the debt charges on the Notes at  
307 maturity and are pledged for that purpose.  
308

309 Section 9. During the year or years in which the Notes are outstanding, there  
310 shall be levied on all the taxable property in the City, in addition to all other taxes,  
311 the same tax that would have been levied if the Bonds had been issued without  
312 the prior issuance of the Notes. The tax shall be within the eleven mill limitation  
313 provided by the Charter of the City, shall be and is ordered computed, certified,  
314 levied and extended upon the tax duplicate and collected by the same officers, in  
315 the same manner, and at the same time that taxes for general purposes for each

316 of those years are certified, levied, extended and collected, and shall be placed  
317 before and in preference to all other items and for the full amount thereof. The  
318 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is  
319 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds  
320 when and as the same fall due. In each year to the extent money from the City's  
321 recreation system or from municipal income tax, as provided below, is available  
322 for the payment of the debt charges on the Notes and Bonds and is appropriated  
323 for that purpose, the amount of the tax shall be reduced by the amount of the  
324 money so available and appropriated in compliance with the covenant hereinafter  
325 set forth. To the extent not provided for by the revenues from the City's recreation  
326 system, the debt charges on the Notes and Bonds shall be paid from municipal  
327 income taxes lawfully available therefor under the Constitution and laws of the  
328 State of Ohio; and the City hereby covenants, subject and pursuant to such  
329 authority, including particularly Section 133.05(B)(7), Revised Code, to  
330 appropriate annually from such municipal income taxes such amount as is  
331 necessary to meet such annual debt charges. Nothing in this paragraph in any  
332 way diminishes the pledge of the full faith and credit and property taxing power of  
333 the City to the prompt payment of the debt charges on the Notes.  
334

335 Section 10. The City covenants that it will use, and will restrict the use and  
336 investment of, the proceeds of the Notes in such manner and to such extent, as  
337 may be necessary so that (a) the Notes will not (i) constitute private activity bonds,  
338 arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal  
339 Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as  
340 bonds to which Section 103 of the Code applies, and (b) the interest on the Notes  
341 will not be treated as an item of tax preference under Section 57 of the Code.  
342

343 The City further covenants that (a) it will take or cause to be taken such  
344 actions that may be required of it for the interest on the Notes to be and remain  
345 excluded from gross income for federal income tax purposes, (b) it will not take or  
346 authorize to be taken any actions that would adversely affect that exclusion, and  
347 (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the  
348 proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict  
349 the yield on investment property, (iii) make timely and adequate payments to the  
350 federal government, (iv) maintain books and records and make calculations and  
351 reports and (v) refrain from certain uses of those proceeds, and, as applicable, of  
352 property financed with such proceeds, all in such manner and to the extent  
353 necessary to assure such exclusion of that interest under the Code.  
354

355 The City hereby represents that the Outstanding Notes (the Refunded  
356 Obligation) were designated or deemed designated, and qualified, as a "qualified  
357 tax-exempt obligation" under Section 265(b)(3) of the Code. The City hereby  
358 covenants that it will redeem the Refunded Obligation from proceeds of, and  
359 within 90 days after issuance of, the Notes, and represents that all other  
360 conditions are met for treating the amount of the Notes not in excess of the  
361 principal amount of the Refunded Obligation outstanding immediately prior to the  
362 redemption of the Refunded Obligation as "qualified tax-exempt obligations"  
363 without necessity for further designation and as not to be taken into account  
364 under subparagraph (D) of Section 265(b)(3) of the Code pursuant to  
365 subparagraph (D)(ii) of Section 265(b)(3) of the Code.  
366

367 The amount of the Notes (such amount being the issue price of the Notes less  
368 accrued interest, if any, as determined under the Code) in excess of the principal

369 amount of the Refunded Obligation that is outstanding immediately prior to the  
370 redemption of the Refunded Obligation is hereby designated as “qualified  
371 tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. In that  
372 connection, the City hereby represents and covenants that it, together with all its  
373 subordinate entities or entities that issue obligations on its behalf, or on behalf of  
374 which it issues obligations, in or during the calendar year in which the Notes are  
375 issued, (i) have not issued and will not issue tax-exempt obligations designated as  
376 “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code,  
377 including the aforesaid amount of the Notes, in an aggregate amount in excess of  
378 \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and  
379 will not issue, tax-exempt obligations (including the aforesaid amount of the  
380 Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined  
381 in Section 145 of the Code, that are private activity bonds as defined in Section  
382 141 of the Code and excluding refunding obligations that are not advance  
383 refunding obligations as defined in Section 149(d)(5) of the Code to the extent that  
384 the amount of the refunding obligations does not exceed the outstanding principal  
385 amount of the refunded obligations) in an aggregate amount exceeding  
386 \$10,000,000, unless the City first obtains a written opinion of nationally  
387 recognized bond counsel that such designation or issuance, as applicable, will not  
388 adversely affect the status of the Notes as “qualified tax-exempt obligations.”  
389

390 Further, the City represents and covenants that, during any time or in any  
391 manner as might affect the status of the Notes as “qualified tax exempt  
392 obligations,” it has not formed or participated in the formation of, or benefitted  
393 from or availed itself of, any entity in order to avoid the purposes of subparagraph  
394 (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the  
395 formation of, or benefit from or avail itself of, any such entity. The City further  
396 represents that the Notes are not being issued as part of a direct or indirect  
397 composite issue that combines issues or lots of tax exempt obligations of different  
398 issuers.  
399

400 The Director of Finance, as the fiscal officer, or any other officer of the City  
401 having responsibility for issuance of the Notes is hereby authorized (a) to make or  
402 effect any election, selection, designation, choice, consent, approval, or waiver on  
403 behalf of the City with respect to the Notes as the City is permitted to or required  
404 to make or give under the federal income tax laws, for the purpose of assuring,  
405 enhancing or protecting favorable tax treatment or status of the Notes or interest  
406 thereon or assisting compliance with requirements for that purpose, reducing the  
407 burden or expense of such compliance, reducing the rebate amount or payments  
408 or penalties, or making payments of special amounts in lieu of making  
409 computations to determine, or paying, excess earnings as rebate, or obviating  
410 those amounts or payments, as determined by that officer, which action shall be  
411 in writing and signed by the officer, (b) to take any and all other actions, make or  
412 obtain calculations, make payments, and make or give reports, covenants and  
413 certifications of and on behalf of the City, as may be appropriate to assure the  
414 exclusion of interest from gross income and the intended tax status of the Notes,  
415 and (c) to give one or more appropriate certificates of the City, for inclusion in the  
416 transcript of proceedings for the Notes, setting forth the reasonable expectations  
417 of the City regarding the amount and use of all the proceeds of the Notes, the  
418 facts, circumstances and estimates on which they are based, and other facts and  
419 circumstances relevant to the tax treatment of the interest on and the tax status  
420 of the Notes.  
421

422 Each covenant made in this section with respect to the Notes is also made  
423 with respect to all issues any portion of the debt service on which is paid from  
424 proceeds of the Notes (and, if different, the original issue and any refunding issues  
425 in a series of refundings), to the extent such compliance is necessary to assure  
426 exclusion of interest on the Notes from gross income for federal income tax  
427 purposes, and the officers identified above are authorized to take actions with  
428 respect to those issues as they are authorized in this section to take with respect  
429 to the Notes.  
430

431 Section 11. The Clerk of Council is directed to deliver a certified copy of this  
432 ordinance to the Fiscal Officer in Summit County.  
433

434 Section 12. This Council determines that all acts and conditions necessary to  
435 be done or performed by the City or to have been met precedent to and in the  
436 issuing of the Notes in order to make them legal, valid and binding general  
437 obligations of the City have been performed and have been met, or will at the time  
438 of delivery of the Notes have been performed and have been met, in regular and  
439 due form as required by law; that the full faith and credit and general property  
440 taxing power (as described in Section 9) of the City are pledged for the timely  
441 payment of the debt charges on the Notes; and that no statutory or constitutional  
442 limitation of indebtedness or taxation will have been exceeded in the issuance of  
443 the Notes.  
444

445 Section 13. The Director of Law is authorized to engage the legal services of  
446 the law firm of Squire Sanders (US) LLP, which legal services are to be in the  
447 nature of legal advice and recommendations as to the documents and the  
448 proceedings, and rendering an approving legal opinion, in connection with the  
449 issuance and sale of the Notes. In rendering those legal services, as an  
450 independent contractor and in an attorney-client relationship, that Firm shall not  
451 exercise any administrative discretion on behalf of this City in the formulation of  
452 public policy, expenditure of public funds, enforcement of laws rules and  
453 regulations of the State, any county, or cities or of this City, or the execution of  
454 public trusts. For those legal services that Firm shall be paid fees now estimated  
455 at \$6,200, assuming there will be no official statement, and in addition shall be  
456 reimbursed for actual out-of-pocket expenses (including, but not limited to, travel,  
457 long-distance telephone, fax and duplicating expenses) incurred in rendering  
458 those legal services. The Director of Finance is authorized and directed to make  
459 appropriate certification as to the availability of funds for that fee and any  
460 reimbursement and to issue an appropriate order for their payment as they  
461 become payable.  
462

463 Section 14. This Council finds and determines that all formal actions of this  
464 Council and of any of its committees concerning and relating to the passage of  
465 this ordinance were taken in an open meeting and that all deliberations of this  
466 Council and of any committees that resulted in those formal actions were held, in  
467 meetings open to the public, in compliance with Chapter 107 of the City's Codified  
468 Ordinances.  
469

470 Section 15. This ordinance is declared to be an emergency measure necessary  
471 for the immediate preservation of the public peace, health and safety of the City,  
472 and for the further reason that this ordinance is required to be immediately  
473 effective in order to issue and sell the Notes, which is necessary to enable the City  
474 to timely retire the Outstanding Notes and thereby preserve its credit; wherefore,

475 this ordinance shall be in full force and effect immediately upon its passage and  
476 approval by the Mayor.

477

478

479 Passed: \_\_\_\_\_

480

\_\_\_\_\_  
President of Council

481

482

483

484

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

485

486

487 Approved: \_\_\_\_\_

488

\_\_\_\_\_  
Mayor

489

490 10/28/13

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2  
3  
4 CITY OF CUYAHOGA FALLS, OHIO

5  
6 ORDINANCE NO. -2013

7  
8  
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE  
10 AND SALE OF NOTES IN THE PRINCIPAL AMOUNT  
11 OF \$750,000 IN ANTICIPATION OF THE ISSUANCE  
12 OF BONDS, FOR THE PURPOSE OF CONSTRUCTING  
13 IMPROVEMENTS TO PORTIONS OF STATE ROAD  
14 AND PORTAGE TRAIL, INCLUDING, WHERE  
15 NECESSARY, CONSTRUCTING OR REPLACING  
16 SIDEWALKS AND CURBS, INSTALLING WATER AND  
17 SEWER LINES, CONSTRUCTING TURNING LANES,  
18 INSTALLING TRAFFIC SIGNALS AND LIGHTING, AND  
19 ALL RELATED IMPROVEMENTS, AND DECLARING  
20 AN EMERGENCY.  
21

22 WHEREAS, pursuant to Ordinance No. 83-2012 passed October 8, 2012,  
23 notes in anticipation of bonds in the amount of \$1,400,000 dated December 5,  
24 2012 (the Outstanding Notes), were issued for the purpose stated in Section 1 (the  
25 Project), as part of a consolidated issue pursuant to Section 133.30(B) of the  
26 Revised Code in the principal amount of \$8,400,000, to mature on December 5,  
27 2013; and  
28

29 WHEREAS, this Council finds and determines that the City should retire the  
30 Outstanding Notes with the proceeds of the Notes described in Section 3 and  
31 other funds available to the City; and  
32

33 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to  
34 this Council that the estimated life or period of usefulness of the improvement  
35 described in Section 1 is at least five years, the estimated maximum maturity of  
36 the bonds described in Section 1 is 20 years, and the maximum maturity of the  
37 notes described in Section 3, to be issued in anticipation of the bonds, is  
38 December 5, 2032;  
39

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

43 Section 1. It is necessary to issue bonds of this City in the principal amount of  
44 \$750,000 (the Bonds) for the purpose of constructing improvements to portions of  
45 State Road and Portage Trail, including, where necessary, constructing or  
46 replacing sidewalks and curbs, installing water and sewer lines, constructing  
47 turning lanes, installing traffic signals and lighting, and all related improvements.  
48

49 Section 2. The Bonds shall be dated approximately December 1, 2014, shall  
50 bear interest at the now estimated rate of 5.5% per year, payable on June 1 and  
51 December 1 of each year, commencing June 1, 2015, until the principal amount  
52 is paid, and are estimated to mature in twenty annual principal installments that  
53 are in such amounts that the total principal and interest payments on the Bonds

54 in any fiscal year in which principal is payable are not more than three times the  
55 amount of those payments in any other fiscal year. The first principal installment  
56 is estimated to be December 1, 2015.  
57

58 Section 3. It is necessary to issue and this Council determines that notes in  
59 the aggregate principal amount of \$750,000 (the Notes) shall be issued in  
60 anticipation of the issuance of the Bonds and to retire, together with other funds  
61 available to the City, the Outstanding Notes. The Notes shall bear interest at a  
62 rate or rates not to exceed 6.0% per year (computed on the basis of a 360-day  
63 year consisting of twelve 30-day months), payable at maturity and until the  
64 principal amount is paid or payment is provided for. The rate or rates of interest  
65 on the Notes shall be determined by the Director of Finance in the certificate  
66 awarding the Notes (the "Certificate of Award") in accordance with Section 6 of  
67 this ordinance.  
68

69 Section 4. The debt charges on the Notes shall be payable in Federal Reserve  
70 funds of the United States of America, and shall be payable, without deduction for  
71 services of the City's paying agent, at the principal corporate trust office of The  
72 Huntington National Bank, Columbus, Ohio or at the office of a bank or trust  
73 company designated by the Director of Finance in the Certificate of Award after  
74 determining that the payment at that bank or trust company will not endanger  
75 the funds or securities of the City and that proper procedures and safeguards are  
76 available for that purpose or at the office of the Director of Finance if agreed to by  
77 the Director of Finance and the Original Purchaser (the Paying Agent). The Notes  
78 shall be dated the date of issuance and shall mature not earlier than six months  
79 from that date and not later than twelve months from that date, as shall likewise  
80 be fixed by the Director of Finance in the Certificate of Award.  
81

82 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in  
83 the name of the City and in their official capacities, provided that one of those  
84 signatures may be a facsimile. The Notes shall be issued in the denominations  
85 and numbers as requested by the Original Purchaser, as described in Section 6  
86 hereof, and approved by the Director of Finance, provided that unless the City  
87 distributes an official statement, as described in Section 6 hereof, no Note shall be  
88 issued in a denomination less than \$100,000. The entire principal amount may  
89 be represented by a single note and may be issued as fully registered securities  
90 (for which the Director of Finance will serve as note registrar) and in book entry or  
91 other uncertificated form in accordance with Section 9.96 and Chapter 133 of the  
92 Revised Code if it is determined by the Director of Finance that issuance of fully  
93 registered securities in that form will facilitate the sale and delivery of the Notes.  
94 The Notes shall not have coupons attached, shall be numbered as determined by  
95 the Director of Finance and shall express upon their faces the purpose, in  
96 summary terms, for which they are issued and that they are issued pursuant to  
97 this Ordinance. As used in this section and this ordinance:  
98

99 "Book entry form" or "book entry system" means a form or system under  
100 which (i) the ownership of beneficial interests in the Notes and the principal of,  
101 and interest on, the Notes may be transferred only through a book entry, and (ii) a  
102 single physical Note certificate is issued by the City and payable only to a  
103 Depository or its nominee, with such Notes "immobilized" in the custody of the  
104 Depository or its agent for that purpose. The book entry maintained by others  
105 than the City is the record that identifies the owners of beneficial interests in the  
106 Notes and that principal and interest.

107  
108 “Depository” means any securities depository that is a clearing agency under  
109 federal law operating and maintaining, with its Participants or otherwise, a book  
110 entry system to record ownership of beneficial interests in the Notes or the  
111 principal of, and interest on, the Notes and to effect transfers of the Notes, in book  
112 entry form, and includes and means initially The Depository Trust Company (a  
113 limited purpose trust company), New York, New York.  
114

115 “Participant” means any participant contracting with a Depository under a  
116 book entry system and includes security brokers and dealers, banks and trust  
117 companies, and clearing corporations.  
118

119 The Notes may be issued to a Depository for use in a book entry system and, if  
120 and as long as a book entry system is utilized, (i) the Notes may be issued in the  
121 form of a single Note made payable to the Depository or its nominee and  
122 immobilized in the custody of the Depository or its agent for that purpose; (ii) the  
123 beneficial owners in book entry form shall have no right to receive the Notes in the  
124 form of physical securities or certificates; (iii) ownership of beneficial interests in  
125 book entry form shall be shown by book entry on the system maintained and  
126 operated by the Depository and its Participants, and transfers of the ownership of  
127 beneficial interests shall be made only by book entry by the Depository and its  
128 Participants; and (iv) the Notes as such shall not be transferable or exchangeable,  
129 except for transfer to another Depository or to another nominee of a Depository,  
130 without further action by the City.  
131

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

144 The Director of Finance is also hereby authorized and directed, to the extent  
145 necessary or required, to enter into any agreements determined necessary in  
146 connection with the book entry system for the Notes, after determining that the  
147 signing thereof will not endanger the funds or securities of the City.  
148

149 Section 6. The Notes shall be sold at not less than 97% of the par value  
150 thereof at private sale by the Director of Finance in accordance with law and the  
151 provisions of this ordinance. The Director of Finance shall, in accordance with his  
152 determination of the best interests of and financial advantages to the City and its  
153 taxpayers and conditions then existing in the financial market, consistently with  
154 the provisions of Sections 3 and 4, establish the interest rates to be borne by the  
155 Notes and their maturity, sign the Certificate of Award referred to in Sections 3  
156 and 4 evidencing those determinations, cause the Notes to be prepared, and have  
157 the Notes, signed and delivered, together with a true transcript of proceedings  
158 with reference to the issuance of the Notes, if requested by the Original Purchaser  
159 or Purchasers (collectively, the “Original Purchaser”), to the Original Purchaser



160 upon payment of the purchase price. The Mayor and the Director of Finance are  
161 also authorized, if requested by the Original Purchaser as a condition of such  
162 sale, to execute, on behalf of the City, a Note Purchase Agreement between the  
163 City and such Original Purchaser relating to the sale of such Notes, or the sale of  
164 any consolidated issue of which the Notes are a part, substantially in the form  
165 now on file with the Clerk of Council in Council File No. \_\_\_\_\_, which Note  
166 Purchase Agreement is hereby approved, together with any changes or  
167 amendments not inconsistent with this ordinance and not substantially adverse  
168 to the City and that are approved by the Mayor and the Director of Finance on  
169 behalf of the City, all of which shall be conclusively evidenced by the signing of the  
170 Note Purchase Agreement or any amendments thereto by the Mayor and the  
171 Director of Finance. The Mayor, the Director of Finance, the Clerk of Council and  
172 other City officials, as appropriate, are each authorized and directed to sign any  
173 transcript certificates, financial statements, continuing disclosure agreement and  
174 other documents and instruments and to take such actions as are necessary and  
175 appropriate to consummate the transactions contemplated by this ordinance.  
176 The Director of Finance is authorized, if it is determined to be in the best interest  
177 of the City, to combine the issue of Notes with one or more other note issues of the  
178 City into a consolidated note issue pursuant to Section 133.30(B) of the Revised  
179 Code.

180  
181 The Director of Finance is hereby authorized to offer all or part of the Notes at  
182 par and any accrued interest to the Treasury Investment Board of the City for  
183 investment under Section 731.56 of the Revised Code, in accordance with law and  
184 the provisions of this ordinance if, as a result of the conditions then existing in the  
185 financial markets, the Director of Finance determines it is in the best financial  
186 interest of the City in lieu of the private sale authorized in the preceding  
187 paragraph.

188  
189 If the Mayor or the Director of Finance determines it to be in the best interests  
190 of and financially advantageous to the City, either or both of those officers are  
191 authorized, on behalf of the City, to apply for a rating on the Notes from one or  
192 more nationally-recognized rating organizations.

193  
194 If in the judgment of the Mayor or the Director of Finance a disclosure  
195 document in the form of an official statement (including within such term, but not  
196 limited to, an annual information statement) is appropriate or necessary relating  
197 to the original issuance of the Notes, either or both of those officers, on behalf of  
198 the City and in their official capacities, are authorized to (i) prepare or cause to be  
199 prepared, and make or authorize modifications, completions or changes of or  
200 supplements to, such an official statement, (ii) determine, and to certify or  
201 otherwise represent, when the official statement is to be "deemed final" (except for  
202 permitted omissions) by the City as of its date or is a final official statement for  
203 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or  
204 authorize the use and distribution of those official statements and any  
205 supplements thereto in connection with the original issuance of the Notes, and  
206 (iv) complete and sign those official statements as so approved together with such  
207 certificates, statements or other documents in connection with the finality,  
208 accuracy and completeness of those official statements.

209  
210 As used in this Section and this ordinance:  
211

212 “Note proceedings” means, collectively, this ordinance and the other  
213 proceedings of the City, including the Notes, that collectively provide for, among  
214 other things, the rights of holders and beneficial owners of the Notes.  
215

216 “Rule” means Rule 15c2-12 prescribed by the Securities and Exchange  
217 Commission pursuant to the Securities Exchange Act of 1934.  
218

219 “Specified Events” means the occurrence of any of the following events, within  
220 the meaning of the Rule, with respect to the Notes as applicable: principal and  
221 interest payment delinquencies; non-payment related defaults; unscheduled  
222 draws on debt service reserves reflecting financial difficulties; unscheduled draws  
223 on credit enhancements reflecting financial difficulties; substitution of credit or  
224 liquidity providers, or their failure to perform; adverse tax opinions or events  
225 affecting the tax-exempt status of the Notes; modifications to rights of holders or  
226 beneficial owners of the Notes; Note calls; defeasances; release, substitution or  
227 sale of property securing repayment of the Notes; and rating changes. The City  
228 has not obtained or provided, and does not expect to obtain or provide, any debt  
229 service reserves, credit enhancements or credit or liquidity providers for the Notes,  
230 the Notes are not subject to call for redemption prior to maturity, and repayment  
231 of the Notes is not secured by a lien on any property capable of release or sale or  
232 for which other property may be substituted.  
233

234 If the City prepares and causes the distribution of an official statement for the  
235 Notes, for the benefit of the holders and beneficial owners from time to time of the  
236 Notes, the City agrees, as the only obligated person with respect to the Notes  
237 under the Rule, to provide or cause to be provided such notices, in such manner,  
238 as may be required for purposes of paragraph (b)(5)(i)(C) of the Rule, including  
239 specifically notice to the Municipal Securities Rulemaking Board (MSRB) through  
240 its Electronic Municipal Market Access (EMMA) system, in a timely manner, of the  
241 occurrence of any Specified Event, if that event is material. (The City’s agreement  
242 in this paragraph is herein referred to as the Continuing Disclosure Agreement).  
243

244 The Director of Finance is further authorized and directed to establish  
245 procedures to ensure compliance by the City with the Continuing Disclosure  
246 Agreement, including timely provision of notices as described above. Prior to  
247 providing notice of the occurrence of any Specified Event or of any other events,  
248 the Director of Finance shall consult with and obtain legal advice from, as  
249 appropriate, the Director of Law and bond or other qualified independent special  
250 counsel selected by the City. The Director of Finance, acting in the name and on  
251 behalf of the City, shall be entitled to rely upon any such legal advice in  
252 determining whether a notice should be provided.  
253

254 The City reserves the right to amend the Continuing Disclosure Agreement,  
255 and to obtain the waiver of noncompliance with any provision of that Agreement,  
256 as may be necessary or appropriate to achieve its compliance with any applicable  
257 federal securities law or rule, to cure any ambiguity, inconsistency or formal  
258 defect or omission, and to address any change in circumstances arising from a  
259 change in legal requirements, change in law, or change in the identity, nature or  
260 status of the City, or type of business conducted by the City. Any such  
261 amendment or waiver will not be effective unless the Agreement (as amended or  
262 taking into account such waiver) would have complied with the requirements of  
263 the Rule at the time of the primary offering of the Notes, after taking into account  
264 any applicable amendments to or official interpretations of the Rule, as well as

265 any change in circumstances, and until the City shall have received: either (i) a  
266 written opinion of bond or other qualified independent special counsel selected by  
267 the City that the amendment or waiver would not materially impair the interests  
268 of holders or beneficial owners of the Notes or (ii) the written consent to the  
269 amendment or waiver of the holders of at least a majority of the principal amount  
270 of the Notes then outstanding.  
271

272 The Continuing Disclosure Agreement shall be solely for the benefit of the  
273 holders and beneficial owners from time to time of the Notes. The exclusive  
274 remedy for any breach of the Agreement by the City shall be limited, to the extent  
275 permitted by law, to a right of holders and beneficial owners to institute and  
276 maintain, or to cause to be instituted and maintained, such proceedings as may  
277 be authorized at law or in equity to obtain the specific performance by the City of  
278 its obligations under the Agreement. Any individual holder or beneficial owner  
279 may institute and maintain, or cause to be instituted and maintained, such  
280 proceedings to require the City to provide or cause to be provided a pertinent filing  
281 if such a filing is due and has not been made. Any such proceedings to require  
282 the City to perform any other obligation under the Agreement (including any  
283 proceedings that contest the sufficiency of any pertinent filing) shall be instituted  
284 and maintained only (i) by a trustee appointed by the holders and beneficial  
285 owners of not less than 25% in principal amount of the Notes then outstanding or  
286 (ii) by holders and beneficial owners of not less than 10% in principal amount of  
287 the Notes then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1) of  
288 the Revised Code, as applicable (or any like or comparable successor provisions).  
289

290 The performance by the City of the Continuing Disclosure Agreement shall be  
291 subject to the annual appropriation of any funds that may be necessary to  
292 perform it.  
293

294 The Continuing Disclosure Agreement shall remain in effect only for such  
295 period that the Notes are outstanding in accordance with their terms and the City  
296 remains an obligated person with respect to the Notes within the meaning of the  
297 Rule. The obligation of the City to provide the notices of the Specified Events shall  
298 terminate, if and when the City no longer remains such an obligated person.  
299

300 Section 7. The proceeds from the sale of the Notes, except any premium and  
301 accrued interest, shall be paid into the proper fund or funds and those proceeds  
302 are appropriated and shall be used for the purpose for which the Notes are being  
303 issued. Any portion of those proceeds representing premium and accrued interest  
304 shall be paid into the Bond Retirement Fund.  
305

306 Section 8. The par value to be received from the sale of the Bonds or of any  
307 renewal notes and any excess funds resulting from the issuance of the Notes  
308 shall, to the extent necessary, be used to pay the debt charges on the Notes at  
309 maturity and are pledged for that purpose.  
310

311 Section 9. During the year or years in which the Notes are outstanding, there  
312 shall be levied on all the taxable property in the City, in addition to all other taxes,  
313 the same tax that would have been levied if the Bonds had been issued without  
314 the prior issuance of the Notes. The tax shall be within the eleven mill limitation  
315 provided by the Charter of the City, shall be and is ordered computed, certified,  
316 levied and extended upon the tax duplicate and collected by the same officers, in  
317 the same manner, and at the same time that taxes for general purposes for each

318 of those years are certified, levied, extended and collected, and shall be placed  
319 before and in preference to all other items and for the full amount thereof. The  
320 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is  
321 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds  
322 when and as the same fall due. In each year to the extent money from municipal  
323 income tax, as provided below, or from payments in lieu of taxes lawfully available  
324 therefor, are available for the payment of the debt charges on the Notes and  
325 Bonds and is appropriated for that purpose, the amount of the tax shall be  
326 reduced by the amount of the money so available and appropriated in compliance  
327 with the covenant hereinafter set forth. The debt charges on the Notes and Bonds  
328 shall be paid from municipal income taxes lawfully available therefor under the  
329 Constitution and laws of the State of Ohio; and the City hereby covenants, subject  
330 and pursuant to such authority, including particularly Section 133.05(B)(7),  
331 Revised Code, to appropriate annually from such municipal income taxes such  
332 amount as is necessary to meet such annual debt charges. Nothing in this  
333 paragraph in any way diminishes the pledge of the full faith and credit and  
334 property taxing power of the City to the prompt payment of the debt charges on  
335 the Notes.

336  
337 Section 10. The City covenants that it will use, and will restrict the use and  
338 investment of, the proceeds of the Notes in such manner and to such extent, as  
339 may be necessary so that (a) the Notes will not (i) constitute private activity bonds,  
340 arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal  
341 Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as  
342 bonds to which Section 103 of the Code applies, and (b) the interest on the Notes  
343 will not be treated as an item of tax preference under Section 57 of the Code.

344  
345 The City further covenants that (a) it will take or cause to be taken such  
346 actions that may be required of it for the interest on the Notes to be and remain  
347 excluded from gross income for federal income tax purposes, (b) it will not take or  
348 authorize to be taken any actions that would adversely affect that exclusion, and  
349 (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the  
350 proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict  
351 the yield on investment property, (iii) make timely and adequate payments to the  
352 federal government, (iv) maintain books and records and make calculations and  
353 reports and (v) refrain from certain uses of those proceeds, and, as applicable, of  
354 property financed with such proceeds, all in such manner and to the extent  
355 necessary to assure such exclusion of that interest under the Code.

356  
357 The City hereby represents that the Outstanding Notes (the Refunded  
358 Obligation) were designated or deemed designated, and qualified, as a “qualified  
359 tax-exempt obligation” under Section 265(b)(3) of the Code. The City hereby  
360 covenants that it will redeem the Refunded Obligation from proceeds of, and  
361 within 90 days after issuance of, the Notes, and represents that all other  
362 conditions are met for treating the amount of the Notes not in excess of the  
363 principal amount of the Refunded Obligation outstanding immediately prior to the  
364 redemption of the Refunded Obligation as “qualified tax-exempt obligations”  
365 without necessity for further designation and as not to be taken into account  
366 under subparagraph (D) of Section 265(b)(3) of the Code pursuant to  
367 subparagraph (D)(ii) of Section 265(b)(3) of the Code.

368  
369 The amount of the Notes (such amount being the issue price of the Notes less  
370 accrued interest, if any, as determined under the Code) in excess of the principal

371 amount of the Refunded Obligation that is outstanding immediately prior to the  
372 redemption of the Refunded Obligation is hereby designated as “qualified  
373 tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. In that  
374 connection, the City hereby represents and covenants that it, together with all its  
375 subordinate entities or entities that issue obligations on its behalf, or on behalf of  
376 which it issues obligations, in or during the calendar year in which the Notes are  
377 issued, (i) have not issued and will not issue tax-exempt obligations designated as  
378 “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code,  
379 including the aforesaid amount of the Notes, in an aggregate amount in excess of  
380 \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and  
381 will not issue, tax-exempt obligations (including the aforesaid amount of the  
382 Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined  
383 in Section 145 of the Code, that are private activity bonds as defined in Section  
384 141 of the Code and excluding refunding obligations that are not advance  
385 refunding obligations as defined in Section 149(d)(5) of the Code to the extent that  
386 the amount of the refunding obligations does not exceed the outstanding principal  
387 amount of the refunded obligations) in an aggregate amount exceeding  
388 \$10,000,000, unless the City first obtains a written opinion of nationally  
389 recognized bond counsel that such designation or issuance, as applicable, will not  
390 adversely affect the status of the Notes as “qualified tax-exempt obligations.”  
391

392 Further, the City represents and covenants that, during any time or in any  
393 manner as might affect the status of the Notes as “qualified tax exempt  
394 obligations,” it has not formed or participated in the formation of, or benefitted  
395 from or availed itself of, any entity in order to avoid the purposes of subparagraph  
396 (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the  
397 formation of, or benefit from or avail itself of, any such entity. The City further  
398 represents that the Notes are not being issued as part of a direct or indirect  
399 composite issue that combines issues or lots of tax exempt obligations of different  
400 issuers.  
401

402 The Director of Finance, as the fiscal officer, or any other officer of the City  
403 having responsibility for issuance of the Notes is hereby authorized (a) to make or  
404 effect any election, selection, designation, choice, consent, approval, or waiver on  
405 behalf of the City with respect to the Notes as the City is permitted to or required  
406 to make or give under the federal income tax laws, for the purpose of assuring,  
407 enhancing or protecting favorable tax treatment or status of the Notes or interest  
408 thereon or assisting compliance with requirements for that purpose, reducing the  
409 burden or expense of such compliance, reducing the rebate amount or payments  
410 or penalties, or making payments of special amounts in lieu of making  
411 computations to determine, or paying, excess earnings as rebate, or obviating  
412 those amounts or payments, as determined by that officer, which action shall be  
413 in writing and signed by the officer, (b) to take any and all other actions, make or  
414 obtain calculations, make payments, and make or give reports, covenants and  
415 certifications of and on behalf of the City, as may be appropriate to assure the  
416 exclusion of interest from gross income and the intended tax status of the Notes,  
417 and (c) to give one or more appropriate certificates of the City, for inclusion in the  
418 transcript of proceedings for the Notes, setting forth the reasonable expectations  
419 of the City regarding the amount and use of all the proceeds of the Notes, the  
420 facts, circumstances and estimates on which they are based, and other facts and  
421 circumstances relevant to the tax treatment of the interest on and the tax status  
422 of the Notes.  
423

424 Each covenant made in this section with respect to the Notes is also made  
425 with respect to all issues any portion of the debt service on which is paid from  
426 proceeds of the Notes (and, if different, the original issue and any refunding issues  
427 in a series of refundings), to the extent such compliance is necessary to assure  
428 exclusion of interest on the Notes from gross income for federal income tax  
429 purposes, and the officers identified above are authorized to take actions with  
430 respect to those issues as they are authorized in this section to take with respect  
431 to the Notes.

432  
433 Section 11. The Clerk of Council is directed to deliver a certified copy of this  
434 ordinance to the Fiscal Officer in Summit County.

435  
436 Section 12. This Council determines that all acts and conditions necessary to  
437 be done or performed by the City or to have been met precedent to and in the  
438 issuing of the Notes in order to make them legal, valid and binding general  
439 obligations of the City have been performed and have been met, or will at the time  
440 of delivery of the Notes have been performed and have been met, in regular and  
441 due form as required by law; that the full faith and credit and general property  
442 taxing power (as described in Section 9) of the City are pledged for the timely  
443 payment of the debt charges on the Notes; and that no statutory or constitutional  
444 limitation of indebtedness or taxation will have been exceeded in the issuance of  
445 the Notes.

446  
447 Section 13. The Director of Law is authorized to engage the legal services of  
448 the law firm of Squire Sanders (US) LLP, which legal services are to be in the  
449 nature of legal advice and recommendations as to the documents and the  
450 proceedings, and rendering an approving legal opinion, in connection with the  
451 issuance and sale of the Notes. In rendering those legal services, as an  
452 independent contractor and in an attorney-client relationship, that Firm shall not  
453 exercise any administrative discretion on behalf of this City in the formulation of  
454 public policy, expenditure of public funds, enforcement of laws rules and  
455 regulations of the State, any county, or cities or of this City, or the execution of  
456 public trusts. For those legal services that Firm shall be paid fees now estimated  
457 at \$4,300, assuming there will be no official statement, and in addition shall be  
458 reimbursed for actual out-of-pocket expenses (including, but not limited to, travel,  
459 long-distance telephone, fax and duplicating expenses) incurred in rendering  
460 those legal services. The Director of Finance is authorized and directed to make  
461 appropriate certification as to the availability of funds for that fee and any  
462 reimbursement and to issue an appropriate order for their payment as they  
463 become payable.

464  
465 Section 14. This Council finds and determines that all formal actions of this  
466 Council and of any of its committees concerning and relating to the passage of  
467 this ordinance were taken in an open meeting and that all deliberations of this  
468 Council and of any committees that resulted in those formal actions were held, in  
469 meetings open to the public, in compliance with Chapter 107 of the City's Codified  
470 Ordinances.

471  
472 Section 15. This ordinance is declared to be an emergency measure necessary  
473 for the immediate preservation of the public peace, health and safety of the City,  
474 and for the further reason that this ordinance is required to be immediately  
475 effective in order to issue and sell the Notes, which is necessary to enable the City  
476 to timely retire the Outstanding Notes and thereby preserve its credit; wherefore,

477 this ordinance shall be in full force and effect immediately upon its passage and  
478 approval by the Mayor.

479  
480

481 Passed: \_\_\_\_\_

\_\_\_\_\_  
President of Council

482  
483

484  
485

486  
487

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

488  
489

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

\_\_\_\_\_  
Mayor

490  
491

492 10/28/13

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2  
3  
4 CITY OF CUYAHOGA FALLS, OHIO

5  
6 ORDINANCE NO. -2013

7  
8  
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE  
10 AND SALE OF NOTES IN THE PRINCIPAL AMOUNT  
11 OF \$725,000, IN ANTICIPATION OF THE ISSUANCE  
12 OF BONDS, FOR THE PURPOSE OF PAYING COSTS  
13 OF CONSTRUCTING WATERLINES IN GRAHAM  
14 ROAD, TOGETHER WITH ALL APPURTENANCES  
15 THERETO, AND DECLARING AN EMERGENCY.  
16

17  
18 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to  
19 this Council that the estimated life or period of usefulness of the improvement  
20 described in Section 1 is at least five years, the estimated maximum maturity of  
21 the bonds described in Section 1 is 40 years, and the maximum maturity of the  
22 notes described in Section 3, to be issued in anticipation of the bonds, is 20 years;  
23

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

27 Section 1. It is necessary to issue bonds of this City in the principal amount of  
28 \$725,000 (the Bonds) for the purpose of paying costs of constructing waterlines in  
29 Graham Road, together with all appurtenances thereto.  
30

31 Section 2. The Bonds shall be dated approximately December 1, 2014, shall  
32 bear interest at the now estimated rate of 5.5% per year, payable on June 1 and  
33 December 1 of each year, commencing June 1, 2015, until the principal amount  
34 is paid, and are estimated to mature in twenty annual principal installments that  
35 are in such amounts that the total principal and interest payments on the Bonds  
36 in any fiscal year in which principal is payable are not more than three times the  
37 amount of those payments in any other fiscal year. The first principal installment  
38 is estimated to be December 1, 2015.  
39

40 Section 3. It is necessary to issue and this Council determines that notes in  
41 the aggregate principal amount of \$725,000 (the Notes) shall be issued in  
42 anticipation of the issuance of the Bonds. The Notes shall bear interest at a rate  
43 or rates not to exceed 6.0% per year (computed on the basis of a 360-day year  
44 consisting of twelve 30-day months), payable at maturity and until the principal  
45 amount is paid or payment is provided for. The rate or rates of interest on the  
46 Notes shall be determined by the Director of Finance in the certificate awarding  
47 the Notes (the "Certificate of Award") in accordance with Section 6 of this  
48 ordinance.  
49

50 Section 4. The debt charges on the Notes shall be payable in Federal Reserve  
51 funds of the United States of America, and shall be payable, without deduction for  
52 services of the City's paying agent, at the principal corporate trust office of The  
53 Huntington National Bank, Columbus, Ohio or at the office of a bank or trust



54 company designated by the Director of Finance in the Certificate of Award after  
55 determining that the payment at that bank or trust company will not endanger  
56 the funds or securities of the City and that proper procedures and safeguards are  
57 available for that purpose or at the office of the Director of Finance if agreed to by  
58 the Director of Finance and the Original Purchaser (the Paying Agent). The Notes  
59 shall be dated the date of issuance and shall mature not earlier than six months  
60 from that date and not later than twelve months from that date, as shall likewise  
61 be fixed by the Director of Finance in the Certificate of Award.  
62

63 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in  
64 the name of the City and in their official capacities, provided that one of those  
65 signatures may be a facsimile. The Notes shall be issued in the denominations  
66 and numbers as requested by the Original Purchaser, as described in Section 6  
67 hereof, and approved by the Director of Finance, provided that unless the City  
68 distributes an official statement, as described in Section 6 hereof, no Note shall be  
69 issued in a denomination less than \$100,000. The entire principal amount may  
70 be represented by a single note and may be issued as fully registered securities  
71 (for which the Director of Finance will serve as note registrar) and in book entry or  
72 other uncertificated form in accordance with Section 9.96 and Chapter 133 of the  
73 Revised Code if it is determined by the Director of Finance that issuance of fully  
74 registered securities in that form will facilitate the sale and delivery of the Notes.  
75 The Notes shall not have coupons attached, shall be numbered as determined by  
76 the Director of Finance and shall express upon their faces the purpose, in  
77 summary terms, for which they are issued and that they are issued pursuant to  
78 this Ordinance. As used in this section and this ordinance:  
79

80 “Book entry form” or “book entry system” means a form or system under  
81 which (i) the ownership of beneficial interests in the Notes and the principal of,  
82 and interest on, the Notes may be transferred only through a book entry, and (ii) a  
83 single physical Note certificate is issued by the City and payable only to a  
84 Depository or its nominee, with such Notes “immobilized” in the custody of the  
85 Depository or its agent for that purpose. The book entry maintained by others  
86 than the City is the record that identifies the owners of beneficial interests in the  
87 Notes and that principal and interest.  
88

89 “Depository” means any securities depository that is a clearing agency under  
90 federal law operating and maintaining, with its Participants or otherwise, a book  
91 entry system to record ownership of beneficial interests in the Notes or the  
92 principal of, and interest on, the Notes and to effect transfers of the Notes, in book  
93 entry form, and includes and means initially The Depository Trust Company (a  
94 limited purpose trust company), New York, New York.  
95

96 “Participant” means any participant contracting with a Depository under a  
97 book entry system and includes security brokers and dealers, banks and trust  
98 companies, and clearing corporations.  
99

100 The Notes may be issued to a Depository for use in a book entry system and, if  
101 and as long as a book entry system is utilized, (i) the Notes may be issued in the  
102 form of a single Note made payable to the Depository or its nominee and  
103 immobilized in the custody of the Depository or its agent for that purpose; (ii) the  
104 beneficial owners in book entry form shall have no right to receive the Notes in the  
105 form of physical securities or certificates; (iii) ownership of beneficial interests in  
106 book entry form shall be shown by book entry on the system maintained and

107 operated by the Depository and its Participants, and transfers of the ownership of  
108 beneficial interests shall be made only by book entry by the Depository and its  
109 Participants; and (iv) the Notes as such shall not be transferable or exchangeable,  
110 except for transfer to another Depository or to another nominee of a Depository,  
111 without further action by the City.  
112

113 If any Depository determines not to continue to act as a Depository for the  
114 Notes for use in a book entry system, the Director of Finance may attempt to  
115 establish a securities depository/book entry relationship with another qualified  
116 Depository. If the Director of Finance does not or is unable to do so, the Director  
117 of Finance, after making provision for notification of the beneficial owners by the  
118 then Depository and any other arrangements deemed necessary, shall permit  
119 withdrawal of the Notes from the Depository, and shall cause the Notes in bearer  
120 or payable form to be signed by the officers authorized to sign the Notes and  
121 delivered to the assigns of the Depository or its nominee, all at the cost and  
122 expense (including any costs of printing), if the event is not the result of City  
123 action or inaction, of those persons requesting such issuance.  
124

125 The Director of Finance is also hereby authorized and directed, to the extent  
126 necessary or required, to enter into any agreements determined necessary in  
127 connection with the book entry system for the Notes, after determining that the  
128 signing thereof will not endanger the funds or securities of the City.  
129

130 Section 6. The Notes shall be sold at not less than 97% of the par value  
131 thereof at private sale by the Director of Finance in accordance with law and the  
132 provisions of this ordinance. The Director of Finance shall, in accordance with his  
133 determination of the best interests of and financial advantages to the City and its  
134 taxpayers and conditions then existing in the financial market, consistently with  
135 the provisions of Sections 3 and 4, establish the interest rates to be borne by the  
136 Notes and their maturity, sign the Certificate of Award referred to in Sections 3  
137 and 4 evidencing those determinations, cause the Notes to be prepared, and have  
138 the Notes, signed and delivered, together with a true transcript of proceedings  
139 with reference to the issuance of the Notes, if requested by the Original Purchaser  
140 or Purchasers (collectively, the "Original Purchaser"), to the Original Purchaser  
141 upon payment of the purchase price. The Mayor and the Director of Finance are  
142 also authorized, if requested by the Original Purchaser as a condition of such  
143 sale, to execute, on behalf of the City, a Note Purchase Agreement between the  
144 City and such Original Purchaser relating to the sale of such Notes, or the sale of  
145 any consolidated issue of which the Notes are a part, substantially in the form  
146 now on file with the Clerk of Council in Council File No. \_\_\_\_\_, which Note  
147 Purchase Agreement is hereby approved, together with any changes or  
148 amendments not inconsistent with this ordinance and not substantially adverse  
149 to the City and that are approved by the Mayor and the Director of Finance on  
150 behalf of the City, all of which shall be conclusively evidenced by the signing of the  
151 Note Purchase Agreement or any amendments thereto by the Mayor and the  
152 Director of Finance. The Mayor, the Director of Finance, the Clerk of Council and  
153 other City officials, as appropriate, are each authorized and directed to sign any  
154 transcript certificates, financial statements, continuing disclosure agreement and  
155 other documents and instruments and to take such actions as are necessary and  
156 appropriate to consummate the transactions contemplated by this ordinance.  
157 The Director of Finance is authorized, if it is determined to be in the best interest  
158 of the City, to combine the issue of Notes with one or more other note issues of the

159 City into a consolidated note issue pursuant to Section 133.30(B) of the Revised  
160 Code.

161  
162 The Director of Finance is hereby authorized to offer all or part of the Notes at  
163 par and any accrued interest to the Treasury Investment Board of the City for  
164 investment under Section 731.56 of the Revised Code, in accordance with law and  
165 the provisions of this ordinance if, as a result of the conditions then existing in the  
166 financial markets, the Director of Finance determines it is in the best financial  
167 interest of the City in lieu of the private sale authorized in the preceding  
168 paragraph.

169  
170 If the Mayor or the Director of Finance determines it to be in the best interests  
171 of and financially advantageous to the City, either or both of those officers are  
172 authorized, on behalf of the City, to apply for a rating on the Notes from one or  
173 more nationally-recognized rating organizations.

174  
175 If in the judgment of the Mayor or the Director of Finance a disclosure  
176 document in the form of an official statement (including within such term, but not  
177 limited to, an annual information statement) is appropriate or necessary relating  
178 to the original issuance of the Notes, either or both of those officers, on behalf of  
179 the City and in their official capacities, are authorized to (i) prepare or cause to be  
180 prepared, and make or authorize modifications, completions or changes of or  
181 supplements to, such an official statement, (ii) determine, and to certify or  
182 otherwise represent, when the official statement is to be “deemed final” (except for  
183 permitted omissions) by the City as of its date or is a final official statement for  
184 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or  
185 authorize the use and distribution of those official statements and any  
186 supplements thereto in connection with the original issuance of the Notes, and  
187 (iv) complete and sign those official statements as so approved together with such  
188 certificates, statements or other documents in connection with the finality,  
189 accuracy and completeness of those official statements.

190  
191 As used in this Section and this ordinance:

192  
193 “Note proceedings” means, collectively, this ordinance and the other  
194 proceedings of the City, including the Notes, that collectively provide for, among  
195 other things, the rights of holders and beneficial owners of the Notes.

196  
197 “Rule” means Rule 15c2-12 prescribed by the Securities and Exchange  
198 Commission pursuant to the Securities Exchange Act of 1934.

199  
200 “Specified Events” means the occurrence of any of the following events, within  
201 the meaning of the Rule, with respect to the Notes as applicable: principal and  
202 interest payment delinquencies; non-payment related defaults; unscheduled  
203 draws on debt service reserves reflecting financial difficulties; unscheduled draws  
204 on credit enhancements reflecting financial difficulties; substitution of credit or  
205 liquidity providers, or their failure to perform; adverse tax opinions or events  
206 affecting the tax-exempt status of the Notes; modifications to rights of holders or  
207 beneficial owners of the Notes; Note calls; defeasances; release, substitution or  
208 sale of property securing repayment of the Notes; and rating changes. The City  
209 has not obtained or provided, and does not expect to obtain or provide, any debt  
210 service reserves, credit enhancements or credit or liquidity providers for the Notes,  
211 the Notes are not subject to call for redemption prior to maturity, and repayment

212 of the Notes is not secured by a lien on any property capable of release or sale or  
213 for which other property may be substituted.  
214

215 If the City prepares and causes the distribution of an official statement for the  
216 Notes, for the benefit of the holders and beneficial owners from time to time of the  
217 Notes, the City agrees, as the only obligated person with respect to the Notes  
218 under the Rule, to provide or cause to be provided such notices, in such manner,  
219 as may be required for purposes of paragraph (b)(5)(i)(C) of the Rule, including  
220 specifically notice to the Municipal Securities Rulemaking Board (MSRB) through  
221 its Electronic Municipal Market Access (EMMA) system, in a timely manner, of the  
222 occurrence of any Specified Event, if that event is material. (The City's agreement  
223 in this paragraph is herein referred to as the Continuing Disclosure Agreement).  
224

225 The Director of Finance is further authorized and directed to establish  
226 procedures to ensure compliance by the City with the Continuing Disclosure  
227 Agreement, including timely provision of notices as described above. Prior to  
228 providing notice of the occurrence of any Specified Event or of any other events,  
229 the Director of Finance shall consult with and obtain legal advice from, as  
230 appropriate, the Director of Law and bond or other qualified independent special  
231 counsel selected by the City. The Director of Finance, acting in the name and on  
232 behalf of the City, shall be entitled to rely upon any such legal advice in  
233 determining whether a notice should be provided.  
234

235 The City reserves the right to amend the Continuing Disclosure Agreement,  
236 and to obtain the waiver of noncompliance with any provision of that Agreement,  
237 as may be necessary or appropriate to achieve its compliance with any applicable  
238 federal securities law or rule, to cure any ambiguity, inconsistency or formal  
239 defect or omission, and to address any change in circumstances arising from a  
240 change in legal requirements, change in law, or change in the identity, nature or  
241 status of the City, or type of business conducted by the City. Any such  
242 amendment or waiver will not be effective unless the Agreement (as amended or  
243 taking into account such waiver) would have complied with the requirements of  
244 the Rule at the time of the primary offering of the Notes, after taking into account  
245 any applicable amendments to or official interpretations of the Rule, as well as  
246 any change in circumstances, and until the City shall have received: either (i) a  
247 written opinion of bond or other qualified independent special counsel selected by  
248 the City that the amendment or waiver would not materially impair the interests  
249 of holders or beneficial owners of the Notes or (ii) the written consent to the  
250 amendment or waiver of the holders of at least a majority of the principal amount  
251 of the Notes then outstanding.  
252

253 The Continuing Disclosure Agreement shall be solely for the benefit of the  
254 holders and beneficial owners from time to time of the Notes. The exclusive  
255 remedy for any breach of the Agreement by the City shall be limited, to the extent  
256 permitted by law, to a right of holders and beneficial owners to institute and  
257 maintain, or to cause to be instituted and maintained, such proceedings as may  
258 be authorized at law or in equity to obtain the specific performance by the City of  
259 its obligations under the Agreement. Any individual holder or beneficial owner  
260 may institute and maintain, or cause to be instituted and maintained, such  
261 proceedings to require the City to provide or cause to be provided a pertinent filing  
262 if such a filing is due and has not been made. Any such proceedings to require  
263 the City to perform any other obligation under the Agreement (including any  
264 proceedings that contest the sufficiency of any pertinent filing) shall be instituted

265 and maintained only (i) by a trustee appointed by the holders and beneficial  
266 owners of not less than 25% in principal amount of the Notes then outstanding or  
267 (ii) by holders and beneficial owners of not less than 10% in principal amount of  
268 the Notes then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1) of  
269 the Revised Code, as applicable (or any like or comparable successor provisions).  
270

271 The performance by the City of the Continuing Disclosure Agreement shall be  
272 subject to the annual appropriation of any funds that may be necessary to  
273 perform it.  
274

275 The Continuing Disclosure Agreement shall remain in effect only for such  
276 period that the Notes are outstanding in accordance with their terms and the City  
277 remains an obligated person with respect to the Notes within the meaning of the  
278 Rule. The obligation of the City to provide the notices of the Specified Events shall  
279 terminate, if and when the City no longer remains such an obligated person.  
280

281 Section 7. The proceeds from the sale of the Notes, except any premium and  
282 accrued interest, shall be paid into the proper fund or funds and those proceeds  
283 are appropriated and shall be used for the purpose for which the Notes are being  
284 issued. Any portion of those proceeds representing premium and accrued interest  
285 shall be paid into the Bond Retirement Fund.  
286

287 Section 8. The par value to be received from the sale of the Bonds or of any  
288 renewal notes and any excess funds resulting from the issuance of the Notes  
289 shall, to the extent necessary, be used to pay the debt charges on the Notes at  
290 maturity and are pledged for that purpose.  
291

292 Section 9. During the year or years in which the Notes are outstanding, there  
293 shall be levied on all the taxable property in the City, in addition to all other taxes,  
294 the same tax that would have been levied if the Bonds had been issued without  
295 the prior issuance of the Notes. The tax shall be within the eleven mill limitation  
296 provided by the Charter of the City, shall be and is ordered computed, certified,  
297 levied and extended upon the tax duplicate and collected by the same officers, in  
298 the same manner, and at the same time that taxes for general purposes for each  
299 of those years are certified, levied, extended and collected, and shall be placed  
300 before and in preference to all other items and for the full amount thereof. The  
301 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is  
302 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds  
303 when and as the same fall due. In each year to the extent money from the City's  
304 water system or from municipal income tax, as provided below, is available for the  
305 payment of the debt charges on the Notes and Bonds and is appropriated for that  
306 purpose, the amount of the tax shall be reduced by the amount of the money so  
307 available and appropriated in compliance with the covenant hereinafter set forth.  
308 To the extent not provided for by the revenues from the City's water system, the  
309 debt charges on the Notes and Bonds shall be paid from municipal income taxes  
310 lawfully available therefor under the Constitution and laws of the State of Ohio;  
311 and the City hereby covenants, subject and pursuant to such authority, including  
312 particularly Section 133.05(B)(7), Revised Code, to appropriate annually from  
313 such municipal income taxes such amount as is necessary to meet such annual  
314 debt charges. Nothing in this paragraph in any way diminishes the pledge of the  
315 full faith and credit and property taxing power of the City to the prompt payment  
316 of the debt charges on the Notes.  
317

318 Section 10. The City covenants that it will use, and will restrict the use and  
319 investment of, the proceeds of the Notes in such manner and to such extent, as  
320 may be necessary so that (a) the Notes will not (i) constitute private activity bonds,  
321 arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal  
322 Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as  
323 bonds to which Section 103 of the Code applies, and (b) the interest on the Notes  
324 will not be treated as an item of tax preference under Section 57 of the Code.  
325

326 The City further covenants that (a) it will take or cause to be taken such  
327 actions that may be required of it for the interest on the Notes to be and remain  
328 excluded from gross income for federal income tax purposes, (b) it will not take or  
329 authorize to be taken any actions that would adversely affect that exclusion, and  
330 (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the  
331 proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict  
332 the yield on investment property, (iii) make timely and adequate payments to the  
333 federal government, (iv) maintain books and records and make calculations and  
334 reports and (v) refrain from certain uses of those proceeds, and, as applicable, of  
335 property financed with such proceeds, all in such manner and to the extent  
336 necessary to assure such exclusion of that interest under the Code.  
337

338 The Notes are hereby designated as “qualified tax-exempt obligations” for  
339 purposes of Section 265(b)(3) of the Code. In that connection, the City hereby  
340 represents and covenants that it, together with all its subordinate entities or  
341 entities that issue obligations on its behalf, or on behalf of which it issues  
342 obligations, in or during the calendar year in which the Notes are issued, (i) have  
343 not issued and will not issue tax-exempt obligations designated as “qualified  
344 tax-exempt obligations” for purposes of Section 265(b)(3) of the Code, including  
345 the Notes, in an aggregate amount in excess of \$10,000,000, and (ii) have not  
346 issued, do not reasonably anticipate issuing, and will not issue, tax-exempt  
347 obligations (including the Notes, but excluding obligations, other than qualified  
348 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity  
349 bonds as defined in Section 141 of the Code and excluding refunding obligations  
350 that are not advance refunding obligations as defined in Section 149(d)(5) of the  
351 Code to the extent that the amount of the refunding obligations does not exceed  
352 the outstanding principal amount of the refunded obligations) in an aggregate  
353 amount exceeding \$10,000,000, unless the City first obtains a written opinion of  
354 nationally recognized bond counsel that such designation or issuance, as  
355 applicable, will not adversely affect the status of the Notes as “qualified  
356 tax-exempt obligations.”  
357

358 Further, the City represents and covenants that, during any time or in any  
359 manner as might affect the status of the Notes as “qualified tax exempt  
360 obligations,” it has not formed or participated in the formation of, or benefitted  
361 from or availed itself of, any entity in order to avoid the purposes of subparagraph  
362 (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the  
363 formation of, or benefit from or avail itself of, any such entity. The City further  
364 represents that the Notes are not being issued as part of a direct or indirect  
365 composite issue that combines issues or lots of tax exempt obligations of different  
366 issuers.  
367

368 The Director of Finance, as the fiscal officer, or any other officer of the City  
369 having responsibility for issuance of the Notes is hereby authorized (a) to make or  
370 effect any election, selection, designation, choice, consent, approval, or waiver on

371 behalf of the City with respect to the Notes as the City is permitted to or required  
372 to make or give under the federal income tax laws, for the purpose of assuring,  
373 enhancing or protecting favorable tax treatment or status of the Notes or interest  
374 thereon or assisting compliance with requirements for that purpose, reducing the  
375 burden or expense of such compliance, reducing the rebate amount or payments  
376 or penalties, or making payments of special amounts in lieu of making  
377 computations to determine, or paying, excess earnings as rebate, or obviating  
378 those amounts or payments, as determined by that officer, which action shall be  
379 in writing and signed by the officer, (b) to take any and all other actions, make or  
380 obtain calculations, make payments, and make or give reports, covenants and  
381 certifications of and on behalf of the City, as may be appropriate to assure the  
382 exclusion of interest from gross income and the intended tax status of the Notes,  
383 and (c) to give one or more appropriate certificates of the City, for inclusion in the  
384 transcript of proceedings for the Notes, setting forth the reasonable expectations  
385 of the City regarding the amount and use of all the proceeds of the Notes, the  
386 facts, circumstances and estimates on which they are based, and other facts and  
387 circumstances relevant to the tax treatment of the interest on and the tax status  
388 of the Notes.

389  
390 Section 11. The Clerk of Council is directed to deliver a certified copy of this  
391 ordinance to the Fiscal Officer in Summit County.

392  
393 Section 12. This Council determines that all acts and conditions necessary to  
394 be done or performed by the City or to have been met precedent to and in the  
395 issuing of the Notes in order to make them legal, valid and binding general  
396 obligations of the City have been performed and have been met, or will at the time  
397 of delivery of the Notes have been performed and have been met, in regular and  
398 due form as required by law; that the full faith and credit and general property  
399 taxing power (as described in Section 9) of the City are pledged for the timely  
400 payment of the debt charges on the Notes; and that no statutory or constitutional  
401 limitation of indebtedness or taxation will have been exceeded in the issuance of  
402 the Notes.

403  
404 Section 13. The Director of Law is authorized to engage the legal services of  
405 the law firm of Squire Sanders (US) LLP, which legal services are to be in the  
406 nature of legal advice and recommendations as to the documents and the  
407 proceedings, and rendering an approving legal opinion, in connection with the  
408 issuance and sale of the Notes. In rendering those legal services, as an  
409 independent contractor and in an attorney-client relationship, that Firm shall not  
410 exercise any administrative discretion on behalf of this City in the formulation of  
411 public policy, expenditure of public funds, enforcement of laws rules and  
412 regulations of the State, any county, or cities or of this City, or the execution of  
413 public trusts. For those legal services that Firm shall be paid fees now estimated  
414 at \$4,300, assuming there will be no official statement, and in addition shall be  
415 reimbursed for actual out-of-pocket expenses (including, but not limited to, travel,  
416 long-distance telephone, fax and duplicating expenses) incurred in rendering  
417 those legal services. The Director of Finance is authorized and directed to make  
418 appropriate certification as to the availability of funds for that fee and any  
419 reimbursement and to issue an appropriate order for their payment as they  
420 become payable.

421  
422 Section 14. This Council finds and determines that all formal actions of this  
423 Council and of any of its committees concerning and relating to the passage of

424 this ordinance were taken in an open meeting and that all deliberations of this  
425 Council and of any committees that resulted in those formal actions were held, in  
426 meetings open to the public, in compliance with Chapter 107 of the City's Codified  
427 Ordinances.

428  
429 Section 15. This ordinance is declared to be an emergency measure necessary  
430 for the immediate preservation of the public peace, health and safety of the City,  
431 and for the further reason that this ordinance is required to be immediately  
432 effective in order to issue and sell the Notes, which is necessary to enable the City  
433 to provide an adequate supply and availability of potable water and water for fire  
434 protection and to timely meet its obligations under construction contracts;  
435 wherefore, this ordinance shall be in full force and effect immediately upon its  
436 passage and approval by the Mayor.

437  
438  
439 Passed: \_\_\_\_\_

\_\_\_\_\_  
President of Council

440  
441  
442  
443

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

444  
445  
446  
447 Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

448  
449  
450 10/28/13

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