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3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. 607 -2012
7

8
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE
10 AND SALE OF \$8,600,000 PRINCIPAL AMOUNT OF
11 NOTES, IN ANTICIPATION OF THE ISSUANCE OF
12 BONDS, FOR THE PURPOSE OF REVITALIZING THE
13 STATE ROAD REDEVELOPMENT AREA BY
14 ACQUIRING, CLEARING AND IMPROVING CERTAIN
15 PROPERTIES IN THAT AREA, AND DECLARING AN
16 EMERGENCY.
17

18 WHEREAS, the City has undertaken a program for the clearance,
19 redevelopment and rehabilitation of blighted areas in the City, and the City,
20 under its home rule powers, and acting through this City Council, by
21 Resolution No. 18-2007, passed October 1, 2007, approved the State Road
22 Redevelopment and Retail Analysis Master Plan (which plan is herein referred to
23 as the "Urban Redevelopment Plan") for the State Road commercial area (the
24 "Plan Area"); and
25

26 WHEREAS, the Urban Redevelopment Plan includes, but is not limited to,
27 undertakings and activities by the City for the purpose of elimination of blight
28 and to obtain redevelopment of the sites and facilities therein for commercial
29 purposes to prevent the recurrence of blight, and revitalizing the Plan Area
30 pursuant to Section 20 of Article VIII of the Ohio Constitution by providing for
31 and enabling the environmentally safe and productive development and use or
32 reuse of lands within the Plan Area by addressing by clearance, land acquisition
33 or assembly or otherwise property conditions or circumstances that preclude
34 and inhibit environmentally sound and economic use or reuse of such
35 properties; and
36

37 WHEREAS, this City Council, in furtherance of carrying out that Urban
38 Redevelopment Plan and revitalizing the Plan Area, authorized the
39 appropriation of certain property in the Plan Area by Resolution 18-2007 and by
40 Ordinance No. 116-2007, passed October 9, 2007 and the City acquired
41 property in the Plan area, demolished buildings thereon and remediated the
42 site; and
43

44 WHEREAS, pursuant to Ordinance No. 59-2011, passed July 11, 2011, notes
45 in anticipation of bonds in the amount of \$8,600,000 dated August 17, 2011 and
46 maturing August 16, 2012 (the Outstanding Notes) were issued for the purpose
47 stated in Section 1 (the Project); and
48

49 WHEREAS, this Council finds and determines that the City should retire the
50 Outstanding Notes with the proceeds of the Notes described in Section 3; and
51

52 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to
53 this Council that the estimated life or period of usefulness of the improvement

54 described in Section 1 is at least five years, the estimated maximum maturity of
55 the bonds described in Section 1 is 50 years, and the maximum maturity of the
56 notes described in Section 3, to be issued in anticipation of the bonds, is August
57 21, 2028;

58
59 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
60 Falls, Summit County, Ohio, that:

61
62 Section 1. It is necessary to issue bonds of this City in the aggregate principal
63 amount of \$8,600,000 (the Bonds) for the purpose of revitalizing the State Road
64 Redevelopment Area by acquiring, clearing and improving certain properties in
65 that Area.

66
67 Section 2. The Bonds shall be dated approximately August 1, 2013, shall bear
68 interest at the now estimated rate of 7.0% per year, payable on June 1 and
69 December 1 of each year, commencing December 1, 2013, until the principal
70 amount is paid, and are estimated to mature in twenty-five annual principal
71 installments that are in such amounts that the total principal and interest
72 payments on the Bonds in any fiscal year in which principal is payable are no
73 more than three times the amount of those payments in any other fiscal year.
74 The first principal installment is estimated to be December 1, 2014.

75
76 Section 3. It is necessary to issue and this Council determines that notes in
77 the aggregate principal amount of \$8,600,000 (the Notes) shall be issued in
78 anticipation of the issuance of the Bonds and to retire the Outstanding Notes.
79 The Notes shall bear interest at a rate or rates not to exceed 5.5% per year
80 (computed on the basis of a 360-day year consisting of twelve 30-day months),
81 payable at maturity and until the principal amount is paid or payment is provided
82 for. The rate or rates of interest on the Notes shall be determined by the Director
83 of Finance in the certificate awarding the Notes (the "Certificate of Award") in
84 accordance with Section 6 of this ordinance.

85
86 Section 4. The debt charges on the Notes shall be payable in Federal Reserve
87 funds of the United States of America, and shall be payable, without deduction for
88 services of the City's paying agent, at the main office of The Huntington National
89 Bank, Columbus, Ohio or at the office of a bank or trust company designated by
90 the Director of Finance in the Certificate of Award after determining that the
91 payment at that bank or trust company will not endanger the funds or securities
92 of the City and that proper procedures and safeguards are available for that
93 purpose or at the office of the Director of Finance if agreed to by the Director of
94 Finance and the Original Purchaser (the Paying Agent). The Notes shall be dated
95 the date of issuance and shall mature not earlier than ten months from that date
96 and not later than twelve months from that date, as shall likewise be fixed by the
97 Director of Finance in the Certificate of Award.

98
99 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in
100 the name of the City and in their official capacities, provided that one of those
101 signatures may be a facsimile. The Notes shall be issued in the denominations
102 and numbers as requested by the original purchaser and approved by the
103 Director of Finance, provided that unless the City causes the distribution of an
104 official statement, as described in Section 6 hereof, no Note shall be issued in a
105 denomination less than \$100,000. The entire principal amount may be
106 represented by a single note and may be issued as fully registered securities (for

107 which the Director of Finance will serve as note registrar) and in book entry or
108 other uncertificated form in accordance with Section 9.96 and Chapter 133 of the
109 Revised Code if it is determined by the Director of Finance that issuance of fully
110 registered securities in that form will facilitate the sale and delivery of the Notes.
111 The Notes shall not have coupons attached, shall be numbered as determined by
112 the Director of Finance and shall express upon their faces the purpose, in
113 summary terms, for which they are issued and that they are issued pursuant to
114 this Ordinance. As used in this section and this ordinance:
115

116 “Book entry form” or “book entry system” means a form or system under
117 which (i) the ownership of beneficial interests in the Notes and the principal of,
118 and interest on, the Notes may be transferred only through a book entry, and (ii) a
119 single physical Note certificate is issued by the City and payable only to a
120 Depository or its nominee, with such Notes “immobilized” in the custody of the
121 Depository or its agent for that purpose. The book entry maintained by others
122 than the City is the record that identifies the owners of beneficial interests in the
123 Notes and that principal and interest.
124

125 “Depository” means any securities depository that is a clearing agency under
126 federal law operating and maintaining, with its Participants or otherwise, a book
127 entry system to record ownership of beneficial interests in the Notes or the
128 principal of, and interest on, the Notes and to effect transfers of the Notes, in book
129 entry form, and includes and means initially The Depository Trust Company (a
130 limited purpose trust company), New York, New York.
131

132 “Participant” means any participant contracting with a Depository under a
133 book entry system and includes security brokers and dealers, banks and trust
134 companies, and clearing corporations.
135

136 The Notes may be issued to a Depository for use in a book entry system and, if
137 and as long as a book entry system is utilized, (i) the Notes may be issued in the
138 form of a single Note made payable to the Depository or its nominee and
139 immobilized in the custody of the Depository or its agent for that purpose; (ii) the
140 beneficial owners in book entry form shall have no right to receive the Notes in the
141 form of physical securities or certificates; (iii) ownership of beneficial interests in
142 book entry form shall be shown by book entry on the system maintained and
143 operated by the Depository and its Participants, and transfers of the ownership of
144 beneficial interests shall be made only by book entry by the Depository and its
145 Participants; and (iv) the Notes as such shall not be transferable or exchangeable,
146 except for transfer to another Depository or to another nominee of a Depository,
147 without further action by the City.
148

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

160
161 The Director of Finance is also hereby authorized and directed, to the extent
162 necessary or required, to enter into any agreements determined necessary in
163 connection with the book entry system for the Notes, after determining that the
164 signing thereof will not endanger the funds or securities of the City.
165

166 Section 6. The Notes shall be sold at not less than 97% of the principal
167 amount thereof plus any accrued interest at private sale by the Director of
168 Finance in accordance with law and the provisions of this ordinance. The
169 Director of Finance shall, in accordance with his determination of the best
170 interests of and financial advantages to the City and its taxpayers and conditions
171 then existing in the financial market, consistently with the provisions of Sections
172 3 and 4, establish the interest rates to be borne by the Notes and their maturity,
173 sign the Certificate of Award referred to in Sections 3 and 4 evidencing those
174 determinations, cause the Notes to be prepared, and have the Notes signed and
175 delivered, together with a true transcript of proceedings with reference to the
176 issuance of the Notes if requested by the original purchaser or purchasers
177 (collectively, the "Original Purchaser"), to the Original Purchaser upon payment of
178 the purchase price. The Mayor and the Director of Finance are also authorized, if
179 requested by the Original Purchaser as a condition of such sale, to execute, on
180 behalf of the City, a Note Purchase Agreement between the City and such Original
181 Purchaser relating to the sale of such Notes, or the sale of any consolidated issue
182 of which the Notes are a part, substantially in the form now on file with the Clerk
183 of Council in Council File No. _____, which Note Purchase Agreement is hereby
184 approved, together with any changes or amendments not inconsistent with this
185 ordinance and not substantially adverse to the City and that are approved by the
186 Mayor and the Director of Finance on behalf of the City, all of which shall be
187 conclusively evidenced by the signing of the Note Purchase Agreement or any
188 amendments thereto by the Mayor and the Director of Finance. The Mayor, the
189 Director of Finance, the Clerk of Council and other City officials, as appropriate,
190 are each authorized and directed to sign any transcript certificates, financial
191 statements, continuing disclosure agreement and other documents and
192 instruments and to take such actions as are necessary and appropriate to
193 consummate the transactions contemplated by this ordinance. The Director of
194 Finance is authorized, if it is determined to be in the best interest of the City, to
195 combine the issue of Notes with one or more other note issues of the City into a
196 consolidated note issue pursuant to Section 133.30(B) of the Revised Code.
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198 The Director of Finance is hereby authorized to offer all or part of the Notes at
199 par and any accrued interest to the Treasury Investment Board of the City for
200 investment under Section 731.56 of the Revised Code, in accordance with law and
201 the provisions of this ordinance if, as a result of the conditions then existing in the
202 financial markets, the Director of Finance determines it is in the best financial
203 interest of the City in lieu of the private sale authorized in the preceding
204 paragraph.
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206 If the Mayor or the Director of Finance determines it to be in the best interests
207 of and financially advantageous to the City, either or both of those officers are
208 authorized, on behalf of the City, to apply for a rating on the Notes from one or
209 more nationally-recognized rating organizations.
210

211 If in the judgment of the Mayor or the Director of Finance a disclosure
212 document in the form of an official statement (including within such term, but not

213 limited to, an annual information statement) is appropriate or necessary relating
214 to the original issuance of the Notes, either or both of those officers, on behalf of
215 the City and in their official capacities, are authorized to (i) prepare or cause to be
216 prepared, and make or authorize modifications, completions or changes of or
217 supplements to, such an official statement, (ii) determine, and to certify or
218 otherwise represent, when the official statement is to be “deemed final” (except for
219 permitted omissions) by the City as of its date or is a final official statement for
220 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or
221 authorize the use and distribution of those official statements and any
222 supplements thereto in connection with the original issuance of the Notes, and
223 (iv) complete and sign those official statements as so approved together with such
224 certificates, statements or other documents in connection with the finality,
225 accuracy and completeness of those official statements.
226

227 As used in this Section and this ordinance:
228

229 “Note proceedings” means, collectively, this ordinance and the other
230 proceedings of the City, including the Notes, that collectively provide for, among
231 other things, the rights of holders and beneficial owners of the Notes.
232

233 “Rule” means Rule 15c2-12 prescribed by the Securities and Exchange
234 Commission pursuant to the Securities Exchange Act of 1934.
235

236 “Specified Events” means the occurrence of any of the following events, within
237 the meaning of the Rule, with respect to the Notes as applicable: principal and
238 interest payment delinquencies; non-payment related defaults; unscheduled
239 draws on debt service reserves reflecting financial difficulties; unscheduled draws
240 on credit enhancements reflecting financial difficulties; substitution of credit or
241 liquidity providers, or their failure to perform; adverse tax opinions or events
242 affecting the tax-exempt status of the Notes; modifications to rights of holders or
243 beneficial owners of the Notes; Note calls; defeasances; release, substitution or
244 sale of property securing repayment of the Notes; and rating changes. The City
245 has not obtained or provided, and does not expect to obtain or provide, any debt
246 service reserves, credit enhancements or credit or liquidity providers for the Notes,
247 the Notes are not subject to call for redemption prior to maturity, and repayment
248 of the Notes is not secured by a lien on any property capable of release or sale or
249 for which other property may be substituted.
250

251 If the City prepares and causes the distribution of an Official Statement for the
252 Notes, for the benefit of the holders and beneficial owners from time to time of the
253 Notes, the City agrees, as the only obligated person with respect to the Notes
254 under the Rule, to provide or cause to be provided such notices, in such manner,
255 as may be required for purposes of paragraph (b)(5)(i)(C) of the Rule, including
256 specifically notice to the Municipal Securities Rulemaking Board (MSRB) through
257 its Electronic Municipal Market Access (EMMA) system, in a timely manner, of the
258 occurrence of any Specified Event, if that event is material. (The City’s agreement
259 in this paragraph is herein referred to as the Continuing Disclosure Agreement).
260

261 The Director of Finance is further authorized and directed to establish
262 procedures to ensure compliance by the City with the Continuing Disclosure
263 Agreement, including timely provision of notices as described above. Prior to
264 providing notice of the occurrence of any Specified Event or of any other events,
265 the Director of Finance shall consult with and obtain legal advice from, as

266 appropriate, the Director of Law and bond or other qualified independent special
267 counsel selected by the City. The Director of Finance, acting in the name and on
268 behalf of the City, shall be entitled to rely upon any such legal advice in
269 determining whether a notice should be provided.
270

271 The City reserves the right to amend the Continuing Disclosure Agreement,
272 and to obtain the waiver of noncompliance with any provision of that Agreement,
273 as may be necessary or appropriate to achieve its compliance with any applicable
274 federal securities law or rule, to cure any ambiguity, inconsistency or formal
275 defect or omission, and to address any change in circumstances arising from a
276 change in legal requirements, change in law, or change in the identity, nature or
277 status of the City, or type of business conducted by the City. Any such
278 amendment or waiver will not be effective unless the Agreement (as amended or
279 taking into account such waiver) would have complied with the requirements of
280 the Rule at the time of the primary offering of the Notes, after taking into account
281 any applicable amendments to or official interpretations of the Rule, as well as
282 any change in circumstances, and until the City shall have received: either (i) a
283 written opinion of bond or other qualified independent special counsel selected by
284 the City that the amendment or waiver would not materially impair the interests
285 of holders or beneficial owners of the Notes or (ii) the written consent to the
286 amendment or waiver of the holders of at least a majority of the principal amount
287 of the Notes then outstanding.
288

289 The Continuing Disclosure Agreement shall be solely for the benefit of the
290 holders and beneficial owners from time to time of the Notes. The exclusive
291 remedy for any breach of the Agreement by the City shall be limited, to the extent
292 permitted by law, to a right of holders and beneficial owners to institute and
293 maintain, or to cause to be instituted and maintained, such proceedings as may
294 be authorized at law or in equity to obtain the specific performance by the City of
295 its obligations under the Agreement. Any individual holder or beneficial owner
296 may institute and maintain, or cause to be instituted and maintained, such
297 proceedings to require the City to provide or cause to be provided a pertinent filing
298 if such a filing is due and has not been made. Any such proceedings to require
299 the City to perform any other obligation under the Agreement (including any
300 proceedings that contest the sufficiency of any pertinent filing) shall be instituted
301 and maintained only (i) by a trustee appointed by the holders and beneficial
302 owners of not less than 25% in principal amount of the Notes then outstanding or
303 (ii) by holders and beneficial owners of not less than 10% in principal amount of
304 the Notes then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1) of
305 the Revised Code, as applicable (or any like or comparable successor provisions).
306

307 The performance by the City of the Continuing Disclosure Agreement shall be
308 subject to the annual appropriation of any funds that may be necessary to
309 perform it.
310

311 The Continuing Disclosure Agreement shall remain in effect only for such
312 period that the Notes are outstanding in accordance with their terms and the City
313 remains an obligated person with respect to the Notes within the meaning of the
314 Rule. The obligation of the City to provide the notices of the Specified Events shall
315 terminate, if and when the City no longer remains such an obligated person.
316

317 Section 7. The proceeds from the sale of the Notes, except any premium and
318 accrued interest, shall be paid into the proper fund or funds and those proceeds

319 are appropriated and shall be used for the purpose for which the Notes are being
320 issued. Any portion of those proceeds representing premium and accrued interest
321 shall be paid into the Bond Retirement Fund.
322

323 Section 8. The par value to be received from the sale of the Bonds or of any
324 renewal notes and any excess funds resulting from the issuance of the Notes
325 shall, to the extent necessary, be used to pay the debt charges on the Notes at
326 maturity and are pledged for that purpose.
327

328 Section 9. During the year or years in which the Notes are outstanding, there
329 shall be levied on all the taxable property in the City, in addition to all other taxes,
330 the same tax that would have been levied if the Bonds had been issued without
331 the prior issuance of the Notes. The tax shall be within the eleven mill limitation
332 provided by the Charter of the City, shall be and is ordered computed, certified,
333 levied and extended upon the tax duplicate and collected by the same officers, in
334 the same manner, and at the same time that taxes for general purposes for each
335 of those years are certified, levied, extended and collected, and shall be placed
336 before and in preference to all other items and for the full amount thereof. The
337 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is
338 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds
339 when and as the same fall due. In each year to the extent money from the
340 municipal income tax is available for the payment of the debt charges on the
341 Notes and Bonds and is appropriated for that purpose, the amount of the tax
342 shall be reduced by the amount of the money so available and appropriated in
343 compliance with the covenant hereinafter set forth. To the extent necessary, the
344 debt charges on the Notes and Bonds shall be paid from municipal income taxes
345 lawfully available therefor under the Constitution and laws of the State of Ohio;
346 and the City hereby covenants, subject and pursuant to such authority, including
347 particularly Section 133.05(B)(7), Revised Code, to appropriate annually from
348 such municipal income taxes such amount as is necessary to meet such annual
349 debt charges. Nothing in this paragraph in any way diminishes the pledge of the
350 full faith and credit and property taxing power of the City to the prompt payment
351 of the debt charges on the Notes.
352

353 Section 10. The City does not intend or represent that the interest on the
354 Notes will be excluded from gross income for federal income tax purposes under
355 Section 103 of the Internal Revenue Code of 1986 and the City is not obligated to
356 take any action to attempt to secure or maintain any such exclusion.
357

358 Section 11. The Clerk of Council is directed to deliver a certified copy of this
359 ordinance to the Fiscal Officer in Summit County.
360

361 Section 12. This Council determines that all acts and conditions necessary to
362 be done or performed by the City or to have been met precedent to and in the
363 issuing of the Notes in order to make them legal, valid and binding general
364 obligations of the City have been performed and have been met, or will at the time
365 of delivery of the Notes have been performed and have been met, in regular and
366 due form as required by law; that the full faith and credit and general property
367 taxing power (as described in Section 9) of the City are pledged for the timely
368 payment of the debt charges on the Notes; and that no statutory or constitutional
369 limitation of indebtedness or taxation will have been exceeded in the issuance of
370 the Notes.
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Section 13. The Director of Law is authorized to engage the legal services of the law firm of Squire Sanders (US) LLP, which legal services are to be in the nature of legal advice and recommendations as to the documents and the proceedings, and rendering an approving legal opinion, in connection with the issuance and sale of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that Firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws rules and regulations of the State, any county, or cities or of this City, or the execution of public trusts. For those legal services that Firm shall be paid fees now estimated at \$11,000, and in addition shall be reimbursed for actual out-of-pocket expenses (including, but not limited to, travel, long-distance telephone, fax and duplicating expenses) incurred in rendering those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for that fee and any reimbursement and to issue an appropriate order for their payment as they become payable.

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

Section 15. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 7-30-12

Mark Shamy
President of Council

Cathleen J. Meacham
Clerk of Council

Approved: 7/31/12

D. Robat
Mayor

7/16/12