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3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. 69 - 2012
7

8
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE
10 AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL
11 AMOUNT OF \$3,100,000, IN ANTICIPATION OF THE
12 ISSUANCE OF BONDS, FOR THE PURPOSE OF
13 PAYING COSTS OF WIDENING STATE ROAD FROM
14 GRAHAM ROAD TO QUICK ROAD BY
15 CONSTRUCTING AND INSTALLING SIDEWALKS,
16 BIKE LANES, CURBS, STORM WATER
17 MANAGEMENT IMPROVEMENTS, SIGNALIZATION
18 AND STREET LIGHTING AND OTHER
19 IMPROVEMENTS, AND DECLARING AN
20 EMERGENCY.
21

22
23 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to
24 this Council that the estimated life or period of usefulness of the improvement
25 described in Section 1 is at least five years, the estimated maximum maturity of
26 the bonds described in Section 1 is 20 years, and the maximum maturity of the
27 notes described in Section 3, to be issued in anticipation of the bonds, is 20 years;
28

29 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga
30 Falls, Summit County, Ohio, that:
31

32 Section 1. It is necessary to issue bonds of this City in the maximum principal
33 amount of \$3,100,000 (the Bonds) for the purpose of paying costs of widening
34 State Road from Graham Road to Quick Road by constructing and installing
35 sidewalks, bike lanes, curbs, storm water management improvements,
36 signalization and street lighting and other improvements (the "Project").
37

38 Section 2. The Bonds shall be dated approximately October 1, 2013, shall
39 bear interest at the now estimated rate of 6.0% per year, payable on June 1 and
40 December 1 of each year, commencing June 1, 2014, until the principal amount
41 is paid, and are estimated to mature in twenty annual principal installments that
42 are in such amounts that the total principal and interest payments on the Bonds
43 in any fiscal year in which principal is payable are no more than three times the
44 amount of those payments in any other fiscal year. The first principal installment
45 is estimated to be December 1, 2014.
46

47 Section 3. It is necessary to issue and this Council determines that notes in
48 the maximum principal amount of \$3,100,000 (the Notes) shall be issued in
49 anticipation of the issuance of the Bonds. The aggregate principal amount of
50 Notes to be issued shall be in an amount, not to exceed \$3,100,000, which is
51 determined by the Director of Finance to be required to be issued, taking into
52 account any other funds available for the purpose, to pay costs of the Project,
53 which amount shall be set forth in the certificate of award referred to below. The
54 Notes shall bear interest at a rate or rates not to exceed 6.0% per year (computed

55 on the basis of a 360-day year consisting of twelve 30-day months), payable at
56 maturity and until the principal amount is paid or payment is provided for. The
57 rate or rates of interest on the Notes shall be determined by the Director of
58 Finance in the certificate awarding the Notes (the "Certificate of Award") in
59 accordance with Section 6 of this ordinance.

60
61 Section 4. The debt charges on the Notes shall be payable in Federal Reserve
62 funds of the United States of America, and shall be payable, without deduction for
63 services of the City's paying agent, at the main office of The Huntington National
64 Bank, Columbus, Ohio or at the office of a bank or trust company designated by
65 the Director of Finance in the Certificate of Award after determining that the
66 payment at that bank or trust company will not endanger the funds or securities
67 of the City and that proper procedures and safeguards are available for that
68 purpose or at the office of the Director of Finance if agreed to by the Director of
69 Finance and the Original Purchaser (the Paying Agent). The Notes shall be dated
70 the date of issuance and shall mature not earlier than six months from that date
71 and not later than twelve months from that date, as shall likewise be fixed by the
72 Director of Finance in the Certificate of Award.

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

90
91 "Book entry form" or "book entry system" means a form or system under
92 which (i) the ownership of beneficial interests in the Notes and the principal of,
93 and interest on, the Notes may be transferred only through a book entry, and (ii) a
94 single physical Note certificate is issued by the City and payable only to a
95 Depository or its nominee, with such Notes "immobilized" in the custody of the
96 Depository or its agent for that purpose. The book entry maintained by others
97 than the City is the record that identifies the owners of beneficial interests in the
98 Notes and that principal and interest.

99
100 "Depository" means any securities depository that is a clearing agency under
101 federal law operating and maintaining, with its Participants or otherwise, a book
102 entry system to record ownership of beneficial interests in the Notes or the
103 principal of, and interest on, the Notes and to effect transfers of the Notes, in book
104 entry form, and includes and means initially The Depository Trust Company (a
105 limited purpose trust company), New York, New York.

107 "Participant" means any participant contracting with a Depository under a
108 book entry system and includes security brokers and dealers, banks and trust
109 companies, and clearing corporations.
110

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

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

136 The Director of Finance is also hereby authorized and directed, to the extent
137 necessary or required, to enter into any agreements determined necessary in
138 connection with the book entry system for the Notes, after determining that the
139 signing thereof will not endanger the funds or securities of the City.
140

141 Section 6. The Notes shall be sold at not less than 97% of the par value
142 thereof at private sale by the Director of Finance in accordance with law and the
143 provisions of this ordinance. The Director of Finance shall, in accordance with his
144 determination of the best interests of and financial advantages to the City and its
145 taxpayers and conditions then existing in the financial market, consistently with
146 the provisions of Sections 3 and 4, establish the principal amount of the Notes,
147 the interest rates to be borne by the Notes and their maturity, sign the Certificate
148 of Award referred to in Sections 3 and 4 evidencing those determinations, cause
149 the Notes to be prepared, and have the Notes signed and delivered, together with a
150 true transcript of proceedings with reference to the issuance of the Notes if
151 requested by the Original Purchaser or Purchasers (collectively, the "Original
152 Purchaser"), to the Original Purchaser upon payment of the purchase price. The
153 Mayor and the Director of Finance are also authorized, if requested by the
154 Original Purchaser as a condition of such sale, to execute, on behalf of the City, a
155 Note Purchase Agreement between the City and such Original Purchaser relating
156 to the sale of such Notes, or the sale of any consolidated issue of which the Notes
157 are a part, substantially in the form now on file with the Clerk of Council in
158 Council File No. _____, which Note Purchase Agreement is hereby approved,
159 together with any changes or amendments not inconsistent with this ordinance

160 and not substantially adverse to the City and that are approved by the Mayor and
161 the Director of Finance on behalf of the City, all of which shall be conclusively
162 evidenced by the signing of the Note Purchase Agreement or any amendments
163 thereto by the Mayor and the Director of Finance. The Mayor, the Director of
164 Finance, the Clerk of Council and other City officials, as appropriate, are each
165 authorized and directed to sign any transcript certificates, financial statements,
166 continuing disclosure agreement and other documents and instruments and to
167 take such actions as are necessary and appropriate to consummate the
168 transactions contemplated by this ordinance.

169
170 The Director of Finance is authorized, if it is determined to be in the best
171 interest of the City, to combine the issue of Notes with one or more other note
172 issues of the City into a consolidated note issue pursuant to Section 133.30(B) of
173 the Revised Code.

174
175 The Director of Finance is hereby authorized to offer all or part of the Notes at
176 par and any accrued interest to the Treasury Investment Board of the City for
177 investment under Section 731.56 of the Revised Code, in accordance with law and
178 the provisions of this ordinance if, as a result of the conditions then existing in
179 the financial markets, the Director of Finance determines it is in the best financial
180 interest of the City in lieu of the private sale authorized in the preceding
181 paragraph.

182
183 If the Mayor or the Director of Finance determines it to be in the best interests
184 of and financially advantageous to the City, either or both of those officers are
185 authorized, on behalf of the City, to apply for a rating on the Notes from one or
186 more nationally-recognized rating organizations.

187
188 If in the judgment of the Mayor or the Director of Finance a disclosure
189 document in the form of an official statement (including within such term, but not
190 limited to, an annual information statement) is appropriate or necessary relating
191 to the original issuance of the Notes, either or both of those officers, on behalf of
192 the City and in their official capacities, are authorized to (i) prepare or cause to be
193 prepared, and make or authorize modifications, completions or changes of or
194 supplements to, such an official statement, (ii) determine, and to certify or
195 otherwise represent, when the official statement is to be "deemed final" (except for
196 permitted omissions) by the City as of its date or is a final official statement for
197 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or
198 authorize the use and distribution of those official statements and any
199 supplements thereto in connection with the original issuance of the Notes, and
200 (iv) complete and sign those official statements as so approved together with such
201 certificates, statements or other documents in connection with the finality,
202 accuracy and completeness of those official statements.

203
204 As used in this Section and this ordinance:

205
206 "Note proceedings" means, collectively, this ordinance and the other
207 proceedings of the City, including the Notes, that collectively provide for, among
208 other things, the rights of holders and beneficial owners of the Notes.

209
210 "Rule" means Rule 15c2-12 prescribed by the Securities and Exchange
211 Commission pursuant to the Securities Exchange Act of 1934.

212

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

227
228 If the City prepares and causes the distribution of an official statement for the
229 Notes, for the benefit of the holders and beneficial owners from time to time of the
230 Notes, the City agrees, as the only obligated person with respect to the Notes
231 under the Rule, to provide or cause to be provided such notices, in such manner,
232 as may be required for purposes of paragraph (b)(5)(i)(C) of the Rule, including
233 specifically notice to the Municipal Securities Rulemaking Board (MSRB) through
234 its Electronic Municipal Market Access (EMMA) system, in a timely manner, of the
235 occurrence of any Specified Event, if that event is material. (The City’s agreement
236 in this paragraph is herein referred to as the Continuing Disclosure Agreement).

237
238 The Director of Finance is further authorized and directed to establish
239 procedures to ensure compliance by the City with the Continuing Disclosure
240 Agreement, including timely provision of notices as described above. Prior to
241 providing notice of the occurrence of any Specified Event or of any other events,
242 the Director of Finance shall consult with and obtain legal advice from, as
243 appropriate, the Director of Law and bond or other qualified independent special
244 counsel selected by the City. The Director of Finance, acting in the name and on
245 behalf of the City, shall be entitled to rely upon any such legal advice in
246 determining whether a notice should be provided.

247
248 The City reserves the right to amend the Continuing Disclosure Agreement,
249 and to obtain the waiver of noncompliance with any provision of that Agreement,
250 as may be necessary or appropriate to achieve its compliance with any applicable
251 federal securities law or rule, to cure any ambiguity, inconsistency or formal
252 defect or omission, and to address any change in circumstances arising from a
253 change in legal requirements, change in law, or change in the identity, nature or
254 status of the City, or type of business conducted by the City. Any such
255 amendment or waiver will not be effective unless the Agreement (as amended or
256 taking into account such waiver) would have complied with the requirements of
257 the Rule at the time of the primary offering of the Notes, after taking into account
258 any applicable amendments to or official interpretations of the Rule, as well as
259 any change in circumstances, and until the City shall have received: either (i) a
260 written opinion of bond or other qualified independent special counsel selected by
261 the City that the amendment or waiver would not materially impair the interests
262 of holders or beneficial owners of the Notes or (ii) the written consent to the
263 amendment or waiver of the holders of at least a majority of the principal amount
264 of the Notes then outstanding.
265

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

283
284 The performance by the City of the Continuing Disclosure Agreement shall be
285 subject to the annual appropriation of any funds that may be necessary to
286 perform it.

287
288 The Continuing Disclosure Agreement shall remain in effect only for such
289 period that the Notes are outstanding in accordance with their terms and the City
290 remains an obligated person with respect to the Notes within the meaning of the
291 Rule. The obligation of the City to provide the notices of the Specified Events shall
292 terminate, if and when the City no longer remains such an obligated person.

293
294 Section 7. The proceeds from the sale of the Notes, except any premium and
295 accrued interest, shall be paid into the proper fund or funds and those proceeds
296 are appropriated and shall be used for the purpose for which the Notes are being
297 issued. Any portion of those proceeds representing premium and accrued interest
298 shall be paid into the Bond Retirement Fund.

299
300 Section 8. The par value to be received from the sale of the Bonds or of any
301 renewal notes and any excess funds resulting from the issuance of the Notes
302 shall, to the extent necessary, be used to pay the debt charges on the Notes at
303 maturity and are pledged for that purpose.

304
305 Section 9. During the year or years in which the Notes are outstanding, there
306 shall be levied on all the taxable property in the City, in addition to all other taxes,
307 the same tax that would have been levied if the Bonds had been issued without
308 the prior issuance of the Notes. The tax shall be within the eleven mill limitation
309 provided by the Charter of the City, shall be and is ordered computed, certified,
310 levied and extended upon the tax duplicate and collected by the same officers, in
311 the same manner, and at the same time that taxes for general purposes for each
312 of those years are certified, levied, extended and collected, and shall be placed
313 before and in preference to all other items and for the full amount thereof. The
314 proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is
315 irrevocably pledged for the payment of the debt charges on the Notes or the Bonds
316 when and as the same fall due. In each year to the extent money from municipal
317 income tax, as provided below, is available for the payment of the debt charges on
318 the Notes and Bonds and is appropriated for that purpose, the amount of the tax

319 shall be reduced by the amount of the money so available and appropriated in
320 compliance with the covenant hereinafter set forth. To the extent necessary, the
321 debt charges on the Notes and Bonds shall be paid from municipal income taxes
322 lawfully available therefor under the Constitution and laws of the State of Ohio;
323 and the City hereby covenants, subject and pursuant to such authority, including
324 particularly Section 133.05(B)(7), Revised Code, to appropriate annually from
325 such municipal income taxes such amount as is necessary to meet such annual
326 debt charges. Nothing in this paragraph in any way diminishes the pledge of the
327 full faith and credit and property taxing power of the City to the prompt payment
328 of the debt charges on the Notes.
329

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

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

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

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

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

Section 13. The Law Director 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 \$11,500, assuming there will be no official statement, 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 eliminate existing hazards to vehicular and pedestrian traffic; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

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Passed: 7-30-12, 2012

Approved: 7/31/12, 2012

7/16/12

O:2012ords/State Road Improvement Bond Anticipation Notes

Mark Massey
President of Council

Cathleen J. Meacham
Clerk of Council

D. Robert
Mayor