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4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. 58 -2013
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8
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
10 SALE OF NOTES IN THE PRINCIPAL AMOUNT OF
11 \$1,000,000, IN ANTICIPATION OF THE ISSUANCE OF
12 BONDS, FOR THE PURPOSE OF PAYING COSTS OF
13 WIDENING STATE ROAD FROM GRAHAM ROAD TO QUICK
14 ROAD BY CONSTRUCTING AND INSTALLING SIDEWALKS,
15 BIKE LANES, CURBS, STORM WATER MANAGEMENT
16 IMPROVEMENTS, SIGNALIZATION AND STREET LIGHTING
17 AND OTHER IMPROVEMENTS, AND DECLARING AN
18 EMERGENCY.
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21 WHEREAS, pursuant to Ordinance No. 69-2012, passed July 30, 2012, notes in
22 anticipation of bonds in the amount of \$1,965,000 dated September 25, 2012 and
23 maturing September 25, 2013 (the Outstanding Notes) were issued for the purpose stated
24 in Section 1 (the Project); and
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26 WHEREAS, this Council finds and determines that the City should retire the
27 Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds
28 available to the City; and
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30 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this
31 Council that the estimated life or period of usefulness of the Project is at least five years,
32 the estimated maximum maturity of the bonds described in Section 1 is 20 years, and the
33 maximum maturity of the notes described in Section 3, to be issued in anticipation of the
34 bonds, is September 25, 2032;
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36 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
37 Summit County, Ohio, that:
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39 Section 1. It is necessary to issue bonds of this City in the principal amount of
40 \$1,000,000 (the Bonds) for the purpose of paying costs of widening State Road from
41 Graham Road to Quick Road by constructing and installing sidewalks, bike lanes, curbs,
42 storm water management improvements, signalization and street lighting and other
43 improvements.
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45 Section 2. The Bonds shall be dated approximately September 1, 2014, shall bear
46 interest at the now estimated rate of 6.0% per year, payable on June 1 and December 1 of
47 each year, commencing June 1, 2015, until the principal amount is paid, and are
48 estimated to mature in twenty annual principal installments that are in such amounts
49 that the total principal and interest payments on the Bonds in any fiscal year in which
50 principal is payable are no more than three times the amount of those payments in any
51 other fiscal year. The first principal installment is estimated to be December 1, 2015.
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53 Section 3. It is necessary to issue and this Council determines that notes in the
54 principal amount of \$1,000,000 (the Notes) shall be issued in anticipation of the issuance

55 of the Bonds and to retire, together with other funds available to the City, the Outstanding
56 Notes. The Notes shall bear interest at a rate or rates not to exceed 5.5% per year
57 (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at
58 maturity and until the principal amount is paid or payment is provided for. The rate or
59 rates of interest on the Notes shall be determined by the Director of Finance in the
60 certificate awarding the Notes (the "Certificate of Award") in accordance with Section 6 of
61 this ordinance.
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63 Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of
64 the United States of America, and shall be payable, without deduction for services of the
65 City's paying agent, at the main office of The Huntington National Bank, Columbus, Ohio
66 or at the office of a bank or trust company designated by the Director of Finance in the
67 Certificate of Award after determining that the payment at that bank or trust company will
68 not endanger the funds or securities of the City and that proper procedures and
69 safeguards are available for that purpose or at the office of the Director of Finance if agreed
70 to by the Director of Finance and the Original Purchaser (the Paying Agent). The Notes
71 shall be dated the date of issuance and shall mature not earlier than three months from
72 that date and not later than twelve months from that date, as shall likewise be fixed by the
73 Director of Finance in the Certificate of Award.
74

75 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the
76 name of the City and in their official capacities, provided that one of those signatures may
77 be a facsimile. The Notes shall be issued in the denominations and numbers as requested
78 by the Original Purchaser, as described in Section 6 hereof, and approved by the Director
79 of Finance, provided that no Note shall be issued in a denomination less than \$100,000.
80 The entire principal amount may be represented by a single note and may be issued as
81 fully registered securities (for which the Director of Finance will serve as note registrar)
82 and in book entry or other uncertificated form in accordance with Section 9.96 and
83 Chapter 133 of the Revised Code if it is determined by the Director of Finance that
84 issuance of fully registered securities in that form will facilitate the sale and delivery of the
85 Notes. The Notes shall not have coupons attached, shall be numbered as determined by
86 the Director of Finance and shall express upon their faces the purpose, in summary terms,
87 for which they are issued and that they are issued pursuant to this Ordinance. As used in
88 this section and this ordinance:
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90 "Book entry form" or "book entry system" means a form or system under which (i) the
91 ownership of beneficial interests in the Notes and the principal of, and interest on, the
92 Notes may be transferred only through a book entry, and (ii) a single physical Note
93 certificate is issued by the City and payable only to a Depository or its nominee, with such
94 Notes "immobilized" in the custody of the Depository or its agent for that purpose. The
95 book entry maintained by others than the City is the record that identifies the owners of
96 beneficial interests in the Notes and that principal and interest.
97

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

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

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

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

Section 6. The Notes shall be sold at not less than 97% of the par value thereof at private sale by the Director of Finance in accordance with law and the provisions of this ordinance. The Director of Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial market, consistently with the provisions of Sections 3 and 4, establish the interest rates to be borne by the Notes and their maturity, sign the Certificate of Award referred to in Sections 3 and 4 evidencing those determinations, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser or Purchasers (collectively, the "Original Purchaser"), to the Original Purchaser upon payment of the purchase price. The Mayor and the Director of Finance are also authorized, if requested by the Original Purchaser as a condition of such sale, to execute, on behalf of the City, a Note Purchase Agreement between the City and such Original Purchaser relating to the sale of such Notes, or the sale of any consolidated issue of which the Notes are a part, substantially in the form now on file with the Clerk of Council in Council File No. _____, which Note Purchase Agreement is hereby approved, together with any changes or amendments not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Mayor and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Note Purchase Agreement or any amendments thereto by the Mayor and the Director of Finance. The Mayor, the Director of Finance, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such

160 actions as are necessary and appropriate to consummate the transactions contemplated
161 by this ordinance.

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

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

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

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179 Section 7. The proceeds from the sale of the Notes, except any premium and accrued
180 interest, shall be paid into the proper fund or funds and those proceeds are appropriated
181 and shall be used for the purpose for which the Notes are being issued. Any portion of
182 those proceeds representing premium and accrued interest shall be paid into the Bond
183 Retirement Fund.

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

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190 Section 9. During the year or years in which the Notes are outstanding, there shall be
191 levied on all the taxable property in the City, in addition to all other taxes, the same tax
192 that would have been levied if the Bonds had been issued without the prior issuance of the
193 Notes. The tax shall be within the eleven mill limitation provided by the Charter of the
194 City, shall be and is ordered computed, certified, levied and extended upon the tax
195 duplicate and collected by the same officers, in the same manner, and at the same time
196 that taxes for general purposes for each of those years are certified, levied, extended and
197 collected, and shall be placed before and in preference to all other items and for the full
198 amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement
199 Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the
200 Bonds when and as the same fall due. In each year to the extent money from municipal
201 income tax, as provided below, is available for the payment of the debt charges on the
202 Notes and Bonds and is appropriated for that purpose, the amount of the tax shall be
203 reduced by the amount of the money so available and appropriated in compliance with the
204 covenant hereinafter set forth. To the extent necessary, the debt charges on the Notes and
205 Bonds shall be paid from municipal income taxes lawfully available therefor under the
206 Constitution and laws of the State of Ohio; and the City hereby covenants, subject and
207 pursuant to such authority, including particularly Section 133.05(B)(7), Revised Code, to
208 appropriate annually from such municipal income taxes such amount as is necessary to
209 meet such annual debt charges. Nothing in this paragraph in any way diminishes the
210 pledge of the full faith and credit and property taxing power of the City to the prompt
211 payment of the debt charges on the Notes.

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

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

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

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

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256 Section 12. This Council determines that all acts and conditions necessary to be done
257 or performed by the City or to have been met precedent to and in the issuing of the Notes
258 in order to make them legal, valid and binding general obligations of the City have been
259 performed and have been met, or will at the time of delivery of the Notes have been
260 performed and have been met, in regular and due form as required by law; that the full
261 faith and credit and general property taxing power (as described in Section 9) of the City
262 are pledged for the timely payment of the debt charges on the Notes; and that no statutory
263 or constitutional limitation of indebtedness or taxation will have been exceeded in the
264 issuance of the Notes.
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266 Section 13. The Law Director is authorized to engage the legal services of the law firm
267 of Squire Sanders (US) LLP, which legal services are to be in the nature of legal advice and
268 recommendations as to the documents and the proceedings, and rendering an approving
269 legal opinion, in connection with the issuance and sale of the Notes. In rendering those
270 legal services, as an independent contractor and in an attorney-client relationship, that
271 Firm shall not exercise any administrative discretion on behalf of this City in the
272 formulation of public policy, expenditure of public funds, enforcement of laws rules and
273 regulations of the State, any county, or cities or of this City, or the execution of public
274 trusts. For those legal services that Firm shall be paid fees now estimated at \$7,500, and
275 in addition shall be reimbursed for actual out-of-pocket expenses (including, but not
276 limited to, travel, long-distance telephone, fax and duplicating expenses) incurred in
277 rendering those legal services. The Director of Finance is authorized and directed to make
278 appropriate certification as to the availability of funds for that fee and any reimbursement
279 and to issue an appropriate order for their payment as they become payable.
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281 Section 14. This Council finds and determines that all formal actions of this Council
282 and of any of its committees concerning and relating to the passage of this ordinance were
283 taken in an open meeting and that all deliberations of this Council and of any committees
284 that resulted in those formal actions were held, in meetings open to the public, in
285 compliance with Chapter 107 of the City's Codified Ordinances.
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287 Section 15. This ordinance is declared to be an emergency measure necessary for the
288 immediate preservation of the public peace, health and safety of the City, and for the
289 further reason that this ordinance is required to be immediately effective in order to issue
290 and sell the Notes, which is necessary enable the City to timely retire the Outstanding
291 Notes and thereby preserve its credit; wherefore, this ordinance shall be in full force and
292 effect immediately upon its passage and approval by the Mayor.
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294 Passed: 9-9-13



President of Council

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302 Approved: 9/10/13



Catherine J. Meacham
Clerk of Council


Mayor