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4 CITY OF CUYAHOGA FALLS, OHIO

5  
6 ORDINANCE NO. *606* -2014

7  
8 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE  
9 OF NOTES IN THE AGGREGATE PRINCIPAL AMOUNT OF  
10 \$500,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS,  
11 FOR THE PURPOSE OF PAYING COSTS OF WIDENING STATE  
12 ROAD FROM GRAHAM ROAD TO QUICK ROAD BY  
13 CONSTRUCTING SIDEWALKS, BIKE LANES, CURBS, STORM  
14 WATER MANAGEMENT IMPROVEMENTS, SIGNALIZATION  
15 AND STREET LIGHTING AND OTHER IMPROVEMENTS, AND  
16 DECLARING AN EMERGENCY.  
17

18  
19 WHEREAS, pursuant to Ordinance No. 58-2013 passed September 9, 2013, a note in  
20 anticipation of bonds in the amount of \$1,000,000 dated September 24, 2013 (the "Outstanding  
21 Note"), was issued for the purpose of paying costs of widening State Road from Graham Road to  
22 Quick Road by constructing sidewalks, bike lanes, curbs, storm water management improvements,  
23 signalization and street lighting and other improvements (the "Improvement"), to mature on  
24 September 24, 2014; and  
25

26 WHEREAS, this Council finds and determines that the City should retire the Outstanding  
27 Note with the proceeds of the Notes described in Section 3 and other funds available to the City;  
28 and

29 WHEREAS, the Director of Finance as fiscal officer of this City has certified to this  
30 Council that the estimated life or period of usefulness of the Improvement described in  
31 Section 1 is at least five years, the estimated maximum maturity of the Bonds described  
32 in Section 1 is 20 years, and the maximum maturity of the Notes described in Section 3 is  
33 September 25, 2032;  
34

35 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,  
36 County of Summit, Ohio, that:  
37

38 Section 1. It is necessary to issue bonds of this City in the aggregate principal  
39 amount of \$500,000 (the "Bonds") to pay costs of the Improvement.  
40

41 Section 2. The Bonds shall be dated September 1, 2015, shall bear interest at the  
42 now estimated rate of six percent (6%) per year, payable semiannually until the principal  
43 amount is paid, and are estimated to mature in 20 annual principal installments on  
44 December 1 of each year that are in such amounts that the total principal and interest  
45 payments on the Bonds in any fiscal year in which principal is payable are substantially  
46 equal. The first principal payment of the Bonds is estimated to be December 1, 2016.  
47

48 Section 3. It is necessary to issue and this Council determines that notes in the  
49 aggregate principal amount of \$500,000 (the "Notes") shall be issued in anticipation of the

50 issuance of the Bonds and to retire, together with other funds available to the City, the  
51 Outstanding Note and to pay financing costs of the issuance of the Notes. The Notes shall  
52 be dated their date of issuance and shall mature one year from the date of issuance,  
53 provided that the date of issuance shall not be later than September 24, 2014, and further  
54 provided that the Director of Finance may, if it is determined to be necessary or advisable  
55 to the sale of the Notes, establish a maturity date that is up to 15 days less than one year  
56 from the date of issuance by setting forth that maturity date in a final terms certificate in  
57 accordance with Section 6 of this Ordinance (the "Final Terms Certificate"). The Notes  
58 shall bear interest at a rate or rates not to exceed six percent (6%) per year (computed on  
59 the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and  
60 until the principal amount is paid or payment is provided for. The rate of interest on the  
61 Notes shall be determined by the Director of Finance in the Final Terms Certificate.  
62

63 Section 4. The principal of and interest on the Notes shall be payable in lawful  
64 money of the United States of America, and shall be payable, without deduction for services  
65 of the City's paying agent, at the office of a bank or trust company designated by the  
66 Director of Finance in the Final Terms Certificate after determining that the payment at  
67 that bank or trust company will not endanger the funds or securities of the City and that  
68 proper procedures and safeguards are available for that purpose (the "Paying Agent").  
69

70 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the  
71 name of the City and in their official capacities, provided that one of those signatures may  
72 be a facsimile. The Notes shall be issued in the denominations and numbers as requested  
73 by Stifel, Nicolaus & Company, Incorporated (the "Original Purchaser") and approved by  
74 the Director of Finance in the Final Terms Certificate, and the entire principal amount may  
75 be represented by a single note, may be issued as fully registered securities (for which the  
76 Director of Finance will serve as note registrar), and may be issued in book entry or other  
77 uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code  
78 if it is determined by the Director of Finance that issuance of the Notes in that form will  
79 facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached,  
80 shall be numbered as determined by the Director of Finance and shall express upon their  
81 faces the purpose, in summary terms, for which they are issued and that they are issued  
82 pursuant to this Ordinance.  
83

84 The Notes may be issued to any securities depository (a "Depository") that is a  
85 clearing agency under federal law operating and maintaining, with any participants  
86 contracting with a Depository under a book entry system and includes security brokers  
87 and dealers, banks and trust companies, and clearing corporations or otherwise  
88 ("Participants"), a system (a "book entry system") under which (i) the ownership of  
89 beneficial interests in the Notes and the principal of, and interest on, the Notes may be  
90 transferred only through a book entry, and (ii) a single physical Note certificate is issued  
91 by the City and payable only to a Depository or its nominee, with such Notes "immobilized"  
92 in the custody of the Depository or its agent for that purpose. If, and as long as a book  
93 entry system is utilized, (i) the Notes may be issued in the form of a single Note made  
94 payable to the Depository or its nominee and immobilized in the custody of the Depository  
95 or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no  
96 right to receive the Notes in the form of physical securities or certificates; (iii) ownership of  
97 beneficial interests in book entry form shall be shown by book entry on the system  
98 maintained and operated by the Depository and its Participants, and transfers of the  
99 ownership of beneficial interests shall be made only by book entry by the Depository and

100 its Participants; and (iv) the Notes as such shall not be transferable or exchangeable,  
101 except for transfer to another Depository or to another nominee of a Depository, without  
102 further action by the City.  
103

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

115 The Director of Finance is also hereby authorized and directed, to the extent  
116 necessary or required, to enter into any agreements determined necessary in connection  
117 with the book entry system for the Notes, after determining that the signing thereof will  
118 not endanger the funds or securities of the City.  
119

120 Section 6. The Notes shall be sold to the Original Purchaser at a purchase price of  
121 not less than par of the principal amount thereof plus accrued interest by the Director of  
122 Finance in accordance with law and the provisions of this Ordinance. The note purchase  
123 agreement by and between the City and the Original Purchaser (the "Note Purchase  
124 Agreement") now on file with the Clerk of this Council is now approved, and the Director  
125 of Finance is authorized to sign and deliver, on behalf of the City, the Note Purchase  
126 Agreement with such changes that are not inconsistent with the provisions of this  
127 Ordinance, are not materially adverse to the interests of the City and are approved by the  
128 Director of Finance. That any such changes to the Note Purchase Agreement are not  
129 materially adverse to the interests of the City and approved by the Director of Finance shall  
130 be evidenced conclusively by the signing of the Note Purchase Agreement by the Director  
131 of Finance. The Director of Finance shall sign the Final Terms Certificate referred to in  
132 Sections 3 and 4 and cause the Notes to be prepared, and have the Notes signed and  
133 delivered, together with a true transcript of proceedings with reference to the issuance of  
134 the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment  
135 of the purchase price. The Mayor, the Director of Finance, the Director of Law, the Clerk  
136 of Council and other City officials, as appropriate, are each authorized and directed to sign  
137 any transcript certificates, financial statements and other documents and instruments  
138 and to take such actions as are necessary or appropriate to consummate the transactions  
139 contemplated by this Ordinance. The Director of Finance is authorized, if it is determined  
140 to be in the best interest of the City, to combine the Notes with one or more other note  
141 issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the  
142 Revised Code.  
143

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

150       Section 7. A portion of the proceeds from the sale of the Notes sufficient, together  
151 with other funds available to the City, to retire the Outstanding Note at maturity shall be  
152 deposited into the bond retirement fund and used to retire the Outstanding Note. The  
153 remaining proceeds from the sale of the Notes shall be paid into the proper fund or funds  
154 and those proceeds are appropriated and shall be used for the purpose for which the Notes  
155 are being issued. Any income earned from the investment of the proceeds of the Notes shall  
156 be deposited into the fund in which such proceeds are deposited (and shall not be  
157 transferred to the General Fund). The proceeds from the sale of the Notes and the  
158 investment earnings on those proceeds are appropriated for the uses described above.  
159

160       Section 8. The par value to be received from the sale of the Bonds or of any renewal  
161 notes and any excess funds resulting from the issuance of the Notes shall, to the extent  
162 necessary, be used to pay the principal of and interest on the Notes at maturity and are  
163 pledged for that purpose.  
164

165       Section 9. During the year or years in which the Notes are outstanding, there shall  
166 be levied on all the taxable property in the City, in addition to all other taxes, the same tax  
167 that would have been levied if the Bonds had been issued without the prior issuance of  
168 the Notes. The tax shall be within the 11-mill limitation provided by the Charter of the  
169 City, shall be and is ordered computed, certified, levied and extended upon the tax  
170 duplicate and collected by the same officers, in the same manner, and at the same time  
171 that taxes for general purposes for each of those years are certified, levied, extended and  
172 collected, and shall be placed before and in preference to all other items and for the full  
173 amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund,  
174 which is irrevocably pledged for the payment of the principal of and interest on the Notes  
175 or the Bonds when and as the same fall due. In each year to the extent money from the  
176 municipal income tax, as provided below, is available for the payment of the debt charges  
177 on the Notes and Bonds and is appropriated for that purpose, the amount of the tax shall  
178 be reduced by the amount of the money so available and appropriated in compliance with  
179 the covenant hereinafter set forth. To the extent necessary, the debt charges on the Notes  
180 and Bonds shall be paid from municipal income taxes lawfully available therefor under the  
181 Constitution and laws of the State of Ohio; and the City hereby covenants, subject and  
182 pursuant to such authority, including particularly Section 133.05(B)(7), Revised Code, to  
183 appropriate annually from such municipal income taxes such amount as is necessary to  
184 meet such annual debt charges. Nothing in this paragraph in any way diminishes the  
185 pledge of the full faith and credit and property taxing power of the City to the prompt  
186 payment of the debt charges on the Notes.  
187

188       Section 10. The City covenants that it will use, and will restrict the use and  
189 investment of, the proceeds of the Notes in such manner and to such extent as may be  
190 necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage  
191 bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of  
192 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section  
193 103(a) of the Code applies, and (b) the interest on the Notes will not be an item of tax  
194 preference under Section 57 of the Code.  
195

196       The City further covenants that (a) it will take or cause to be taken such actions  
197 that may be required of it for the interest on the Notes to be and remain excluded from  
198 gross income for federal income tax purposes, (b) it will not take or authorize to be taken

199 any actions that would adversely affect that exclusion, and (c) it, or persons acting for it,  
200 will, among other acts of compliance, (i) apply the proceeds of the Notes to the  
201 governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii)  
202 make timely and adequate payments to the federal government, (iv) maintain books and  
203 records and make calculations and reports and (v) refrain from certain uses of those  
204 proceeds, and, as applicable, of property financed with such proceeds, all in such  
205 manner and to the extent necessary to assure such exclusion of that interest under the  
206 Code.

207  
208 The City hereby represents that the Outstanding Note was designated as a “qualified tax-  
209 exempt obligation” pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it  
210 will redeem all of the Outstanding Note from the proceeds of, and within 90 days after the issuance  
211 of, the Notes, and represents that all other conditions are met for treating the Notes as “qualified tax-  
212 exempt obligations” and not to be taken into account under subparagraph (D) of Section 265(b)(3) of  
213 the Code, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. The City further  
214 represents that it has not formed or participated in the formation of, or benefited from or availed  
215 itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3)  
216 of the Code, and covenants that it will not form, participate in the formation of, or benefit from or  
217 avail itself of any such entity. The City further represents that the Notes are not being issued as  
218 part of a direct or indirect composition issue that combines issues or lots of tax-exempt obligations  
219 of different issuers.

220  
221 The Director of Finance or any other officer of the City having responsibility for issuance  
222 of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice,  
223 consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted  
224 to or required to make or give under the federal income tax laws, including, without limitation  
225 thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under  
226 Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax  
227 treatment or status of the Notes or interest thereon or assisting compliance with requirements for  
228 that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or  
229 payments or penalties, or making payments of special amounts in lieu of making computations to  
230 determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as  
231 determined by that officer, which action shall be in writing and signed by the officer, (b) to take  
232 any and all other actions, make or obtain calculations, make payments, and make or give reports,  
233 covenants and certifications of and on behalf of the City, as may be appropriate to assure the  
234 exclusion of interest from gross income and the intended tax status of the Notes, and (c) to given  
235 one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for  
236 the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all  
237 the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and  
238 other facts and circumstances relevant to the tax treatment of the interest on and the tax status of  
239 the Notes.

240  
241 Each covenant made in this Section with respect to the Notes is also made with respect to  
242 all issues any portion of the principal of and interest on which is paid from proceeds of the Notes  
243 (and, if different, the original issue and any refunding issues in a series of refundings), to the extent  
244 such compliance is necessary to assure exclusion of interest on the Notes from gross income for

245 federal income tax purposes, and the officers identified above are authorized to take actions with  
246 respect to those issues as they are authorized in this Section to take with respect to the Notes.  
247

248 Section 11. If, in the judgment of the Director of Finance, the filing of an application  
249 for (i) a rating on the Notes by one or more nationally-recognized rating agencies, or (ii) a policy  
250 of insurance from a company or companies to better assure the payment of principal of and interest  
251 on the Notes, is in the best interest of and financially advantageous to this City, the Director of  
252 Finance is authorized to prepare and submit those applications, to provide to each such agency or  
253 company such information as may be required for the purpose, and to provide further for the  
254 payment of the cost of obtaining each such rating or policy, except to the extent otherwise paid in  
255 accordance with the Note Purchase Agreement, from the proceeds of the Notes to the extent  
256 available and otherwise from any other funds lawfully available and that are appropriated or shall  
257 be appropriated for that purpose. To the extent the Director of Finance has taken such actions,  
258 those actions are hereby ratified and confirmed.  
259

260 Section 12. The Clerk of Council is directed to deliver a certified copy of this  
261 Ordinance to the Fiscal Officer of Summit County.  
262

263 Section 13. This Council determines it is in the interest of the City to retain the  
264 law firm of Benesch, Friedlander, Coplan & Aronoff LLP ("Benesch") to represent the  
265 City as bond counsel in connection with its proposed issuance of the Notes. This  
266 Council approves the form of the engagement letter from Benesch now on file with this  
267 Council and authorizes the Mayor to sign and accept that engagement letter with such  
268 changes as the Mayor deems necessary.  
269

270 The City acknowledges that few legal firms actively represent public and private  
271 entities in connection with the authorization, sale and issuance of obligations by Ohio  
272 political subdivisions, and that Benesch currently represents, and has from time to time  
273 represented, the Original Purchaser in matters unrelated to the Bonds. This Council  
274 approves the form of the conflict waiver from Benesch now on file with this Council and  
275 authorizes the Mayor to sign that conflict waiver with such changes as the Mayor deems  
276 necessary.  
277

278 Section 14. This Council determines that all acts and conditions necessary to be  
279 done or performed by the City or to have been met precedent to and in the issuing of the  
280 Notes in order to make them legal, valid and binding general obligations of the City have  
281 been performed and have been met, or will at the time of delivery of the Notes have been  
282 performed and have been met, in regular and due form as required by law; that the full  
283 faith and credit and general property taxing power (as described in Section 9) of the City  
284 are pledged for the timely payment of the principal of and interest on the Notes; and that  
285 no statutory or constitutional limitation of indebtedness or taxation will have been  
286 exceeded in the issuance of the Notes.  
287

288 Section 15. This Council finds and determines that all formal actions of this  
289 Council concerning and relating to the passage of this Ordinance, and that all deliberations  
290 of this Council and of any committees that resulted in those formal actions, were taken in  
291 meetings open to the public, in compliance with the law.  
292

293            Section 16. This Ordinance is declared to be an emergency measure necessary for  
294 the immediate preservation of the public peace, health and safety of the City and for the  
295 further reason that this Ordinance is required to be immediately effective in order to issue  
296 and sell the Notes, which is necessary to enable the City to timely retire the Outstanding  
297 Note and thereby preserve its credit; wherefore, this Ordinance shall be in full force and  
298 effect immediately upon its passage and approval by the Mayor.

299  
300  
301 Passed: 7/28/2014

Mary Ellen Pyke  
President of Council

302  
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304  
305  
306 Approved: 7-29-2014

David Quinn  
Clerk of Council  
[Signature]  
Mayor