

CITY OF CUYAHOGA FALLS, OHIO

ORDINANCE NO. 64 -2021

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,255,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF VARIOUS ROAD IMPROVEMENTS INCLUDING THE CONSTRUCTION, RECONSTRUCTION, WIDENING AND IMPROVING OF SOUREK TRAIL FROM SAND RUN ROAD TO THE INTERSECTION WEST OF SAND HILL DRIVE, INCLUDING IMPROVEMENTS TO THE VERTICAL PROFILE, DITCHES, STORM SEWER AND RECONFIGURATION OF THE THREE-LEG INTERSECTION AT SOUREK TRAIL, THE ACQUISITION AND CONSTRUCTION OF WATERLINES ON SOUREK TRAIL, SAND HILL DRIVE AND KUBIC DRIVE, AND THE ACQUISITION OF REAL ESTATE OR INTERESTS THEREIN, AND ALL RELATED IMPROVEMENTS AND APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has requested that the Director of Finance, as fiscal officer of this City, certify the estimated life or period of usefulness of the Improvement described in Section 1, the estimated maximum maturity of the Bonds described in Section 1 and the maximum maturity of the Notes described in Section 3; and

WHEREAS, the Director of Finance has certified to this Council that the estimated life or period of usefulness of the Improvement described in Section 1 is at least five (5) years, the estimated maximum maturity of the Bonds described in Section 1 is at least twenty (20) years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is two hundred forty (240) months.

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

Section 1. It is necessary to issue bonds of this City in the maximum principal amount of \$2,255,000 (the "Bonds") for the purpose of paying the costs of various road improvements including the construction, reconstruction, widening and improving of Sourek Trail from Sand Run Road to the intersection west of Sand Hill Drive, including improvements to the vertical profile, ditches, storm sewer and reconfiguration of the three-leg intersection at Sourek Trail, the acquisition and construction of waterlines on Sourek Trail, Sand Hill Drive and Kubic Drive, and the acquisition of real estate or interests therein, and all related improvements and appurtenances (the "Improvement").

Section 2. The Bonds shall be dated approximately November 1, 2022, shall bear interest at the now estimated rate of 5.50% per year, payable on June 1 and December 1 of each year, commencing June 1, 2023, until the principal amount is paid, and are estimated to mature in twenty (20) annual principal installments that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than three

55 times the amount of those payments in any other fiscal year. The first principal installment is
56 estimated to be December 1, 2023.
57

58 Section 3. It is necessary to issue and this Council determines that notes in the maximum
59 principal amount of \$2,255,000 (the "Notes") shall be issued in anticipation of the issuance of the
60 Bonds for the purpose stated in Section 1, and to pay the costs of the Improvement, capitalized
61 interest and any financing costs. The principal amount of Notes to be issued (not to exceed the
62 stated maximum principal amount) shall be determined by the Director of Finance in the certificate
63 awarding the Notes in accordance with Section 6 of this ordinance (the "Certificate of Award") as
64 the amount which, along with other available funds of the City, is necessary to pay the costs of the
65 Improvement, capitalized interest (if any) and any financing costs. The Notes shall be dated the
66 date of issuance and shall mature not earlier than six months from that date and not later than 12
67 months from that date, as shall likewise be fixed by the Director of Finance in the Certificate of
68 Award. The Notes shall bear interest at a rate or rates not to exceed 6.00% per year (computed on
69 the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the
70 principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall
71 be determined by the Director of Finance in the Certificate of Award in accordance with Section 6
72 of this ordinance.
73

74 Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the
75 United States of America, and shall be payable, without deduction for services of the City's paying
76 agent, at the designated corporate trust office of The Huntington National Bank or at the office of
77 a bank or trust company designated by the Director of Finance in the Certificate of Award after
78 determining that the payment at that bank or trust company will not endanger the funds or securities
79 of the City and that proper procedures and safeguards are available for that purpose or at the office
80 of the Director of Finance if agreed to by the Director of Finance and the original purchaser (the
81 "Paying Agent"). The Director of Finance is authorized, to the extent necessary or appropriate, to
82 enter into an agreement with the Paying Agent in connection with the services to be provided by
83 the Paying Agent after determining that the signing thereof will not endanger the funds or securities
84 of the City.
85

86 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the name of the
87 City and in their official capacities, provided that one of those signatures may be a facsimile. The
88 Notes shall be issued in minimum denominations of \$100,000 (and may be issued in denominations
89 in such amounts in excess thereof as requested by the original purchaser and approved by the
90 Director of Finance) and with numbers as requested by the original purchaser and approved by the
91 Director of Finance. The entire principal amount may be represented by a single note and may be
92 issued as fully registered securities (for which the Director of Finance will serve as note registrar)
93 and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of
94 the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered
95 securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have
96 coupons attached, shall be numbered as determined by the Director of Finance and shall express
97 upon their faces the purpose, in summary terms, for which they are issued and that they are issued
98 pursuant to this ordinance. As used in this section and this ordinance:
99

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

107 “Depository” means any securities depository that is a clearing agency registered pursuant to
108 the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining,
109 with its Participants or otherwise, a book entry system to record ownership of beneficial interests
110 in the Notes or the principal of and interest on the Notes, and to effect transfers of the Notes, in
111 book entry form, and includes and means initially The Depository Trust Company (a limited
112 purpose trust company), New York, New York.

113
114 “Participant” means any participant contracting with a Depository under a book entry system
115 and includes securities brokers and dealers, banks and trust companies and clearing corporations.
116

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

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

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

142
143 Section 6. The Notes shall be sold at not less than 97% of the par value thereof at private sale
144 by the Director of Finance in accordance with law and the provisions of this ordinance, the
145 Certificate of Award and the Note Purchase Agreement (as hereinafter defined). The Director of
146 Finance shall, in accordance with his determination of the best interests of and financially
147 advantageous to the City and its taxpayers and conditions then existing in the financial market,
148 consistently with the provisions of Sections 3 and 4, establish the interest rates to be borne by the
149 Notes and their maturity, sign the Certificate of Award referred to in Sections 3 and 4 evidencing
150 those determinations, cause the Notes to be prepared, and have the Notes signed and delivered,
151 together with a true transcript of proceedings with reference to the issuance of the Notes, if
152 requested by the original purchaser, to the original purchaser upon payment of the purchase price.
153 The note purchase agreement (the “Note Purchase Agreement”) now on file with the Clerk of
154 Council is approved, and the Mayor and the Director of Finance are authorized to sign and deliver,
155 on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent
156 with the provisions of this ordinance, are not materially adverse to the interests of the City and are
157 approved by the Mayor and the Director of Finance. Any such changes to the Note Purchase
158 Agreement are not materially adverse to the interests of the City and are approved by the Mayor
159 and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase
160 Agreement by the Mayor and the Director of Finance. The Mayor, the Director of Finance, the

161 Director of Law, the Clerk of Council and other City officials, as appropriate, and any person
162 serving in an interim or acting capacity for any such official, are each authorized and directed to
163 sign any transcript certificates, financial statements and other documents and instruments,
164 including any paying agent agreement, and to take such actions as are necessary and appropriate to
165 consummate the transactions contemplated by this ordinance. The actions of the Mayor, the
166 Director of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate,
167 in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby
168 ratified and confirmed. The Director of Finance is authorized, if it is determined to be in the best
169 interest of the City, to combine the issue of Notes with one or more other note issues of the City
170 into a consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.
171

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

179 Section 7. The proceeds from the sale of the Notes received by the City (or withheld by the
180 original purchaser or deposited with the Paying Agent, in each case on behalf of the City) shall be
181 paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the
182 purpose for which the Notes are being issued. The Certificate of Award may authorize the original
183 purchaser to (a) withhold certain proceeds from the sale of the Notes or (b) remit certain proceeds
184 from the sale of the Notes to the Paying Agent, in each case to provide for the payment of certain
185 financing costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance
186 with this Section 7, the Paying Agent shall be authorized to create a fund in accordance with the
187 Certificate of Award for that purpose. Any portion of those proceeds received by the City (after
188 payment of those financing costs) representing premium or accrued interest shall be paid into the
189 Bond Retirement Fund.
190

191 Section 8. The par value to be received from the sale of the Bonds or of any renewal notes and
192 any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to
193 pay the debt charges on the Notes at maturity and are pledged for that purpose.
194

195 Section 9. During the year or years in which the Notes are outstanding, there shall be levied
196 on all the taxable property in the City, in addition to all other taxes, the same tax that would have
197 been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be
198 within the eleven-mill limitation provided by the Charter of the City, shall be and is ordered
199 computed, certified, levied and extended upon the tax duplicate and collected by the same officers,
200 in the same manner, and at the same time that taxes for general purposes for each of those years are
201 certified, levied, extended and collected, and shall be placed before and in preference to all other
202 items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond
203 Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or
204 the Bonds when and as the same fall due.
205

206 In each year to the extent the service payments in lieu of real property taxes (the "Service
207 Payments") deposited into the Sourek Trail Incentive District Municipal Public Improvement Tax
208 Increment Equivalent Fund created pursuant to Section 5709.43(A) of the Ohio Revised Code and
209 Ordinance No. 39-2019 passed June 24, 2019 (the "TIF Ordinance") are available for the payment
210 of the debt charges on the portion of the Notes or the Bonds issued for the component purpose
211 described in Section 1 and are appropriated for that component purpose, the amount of the tax shall
212 be reduced by the amount of the Service Payments so available and appropriated.

213 In each year to the extent net revenues from the City's water system are available for the
214 payment of the debt charges on the Notes or the Bonds and are appropriated for that purpose, the
215 amount of the tax shall be reduced by the amount of such net revenues so available and
216 appropriated.

217
218 In each year to the extent net revenues from the City's storm sewer system are available for the
219 payment of the debt charges on the Notes or the Bonds and are appropriated for that purpose, the
220 amount of the tax shall be reduced by the amount of such net revenues so available and
221 appropriated.

222
223 In each year to the extent net revenues from the City's sanitary sewer system are available for
224 the payment of the debt charges on the Notes or the Bonds and are appropriated for that purpose,
225 the amount of the tax shall be reduced by the amount of such net revenues so available and
226 appropriated.

227
228 In each year to the extent receipts from the municipal income tax are available for the payment
229 of the debt charges on the Notes or the Bonds and are appropriated for that purpose, and to the
230 extent not paid from net revenues of the City's water system, the City's storm sewer system or the
231 City's sanitary sewer system, the amount of the tax shall be reduced by the amount of such receipts
232 so available and appropriated in compliance with the following covenant. To the extent necessary,
233 the debt charges on the Notes or the Bonds shall be paid from municipal income taxes lawfully
234 available therefor under the Constitution and the laws of the State of Ohio, and the Charter of the
235 City; and the City hereby covenants, subject and pursuant to such authority, including particularly
236 Section 133.05(B)(7) of the Ohio Revised Code, to appropriate annually from such municipal
237 income taxes such amount as is necessary to meet such annual debt charges.

238
239 Nothing in the five preceding paragraphs in any way diminishes the irrevocable pledge of the
240 full faith and credit and general property taxing power of the City to the prompt payment of the
241 debt charges on the Notes and the Bonds.

242
243 Section 10. The City covenants that it will use, and will restrict the use and investment of, the
244 proceeds of the Notes in such manner and to such extent, as may be necessary so that (a) the Notes
245 will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the
246 Internal Revenue Code of 1986, as amended (the "Code") or (ii) be treated other than as bonds the
247 interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest
248 on the Notes will not be an item of tax preference under Section 57 of the Code.

249
250 The City further covenants that (a) it will take or cause to be taken such actions that may be
251 required of it for the interest on the Notes to be and remain excluded from gross income for federal
252 income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely
253 affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i)
254 apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield
255 on investment property, (iii) make timely and adequate payments to the federal government, (iv)
256 maintain books and records and make calculations and reports and (v) refrain from certain uses of
257 those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and
258 to the extent necessary to assure such exclusion of that interest under the Code.

259
260 The Director of Finance, as the fiscal officer, or any other officer of the City having
261 responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election,
262 selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the
263 Notes as the City is permitted to or required to make or give under the federal income tax laws, for
264 the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or
265 interest thereon or assisting compliance with requirements for that purpose, reducing the burden or
266 expense of such compliance, reducing the rebate amount or payments or penalties, or making

267 payments of special amounts in lieu of making computations to determine, or paying, excess
268 earnings as rebate, or obviating those amounts or payments, as determined by that officer, which
269 action shall be in writing and signed by the officer, (b) to take any and all other actions, make or
270 obtain calculations, make payments, and make or give reports, covenants and certifications of and
271 on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income
272 and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the
273 City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable
274 expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts,
275 circumstances and estimates on which they are based, and other facts and circumstances relevant
276 to the tax treatment of the interest on and the tax status of the Notes. The Director of Finance or
277 any other officer of the City having responsibility for issuance of the Notes is specifically
278 authorized to designate the Notes as "qualified tax-exempt obligations" if such designation is
279 applicable and desirable, and to make any related necessary representations and covenants.

280
281 Section 11. The Director of Finance is authorized to request a rating for the Notes from
282 Moody's Investors Service, Inc. or S&P Global Ratings, or both, as the Director of Finance
283 determines is in the best interest of the City. The expenditure of the amounts necessary to secure
284 any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the
285 Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the
286 amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if
287 available, and otherwise from available moneys in the General Fund.

288
289 Section 12. The Clerk of Council is directed to deliver a certified copy of this ordinance to the
290 Fiscal Officer in Summit County.

291
292 Section 13. This Council determines that all acts and conditions necessary to be done or
293 performed by the City or to have been met precedent to and in the issuing of the Notes in order to
294 make them legal, valid and binding general obligations of the City have been performed and have
295 been met, or will at the time of delivery of the Notes have been performed and have been met, in
296 regular and due form as required by law; that the full faith and credit and general property taxing
297 power (as described in Section 9) of the City are pledged for the timely payment of the debt charges
298 on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have
299 been exceeded in the issuance of the Notes.

300
301 Section 14. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby
302 retained. Those legal services shall be in the nature of legal advice and recommendations as to the
303 documents and the proceedings in connection with the authorization, sale and issuance of the Notes
304 and securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as
305 set forth in the form of engagement letter from that firm which is now on file in the office of the
306 Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-
307 client relationship, that firm shall not exercise any administrative discretion on behalf of this City
308 in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and
309 regulations of the State of Ohio, any county or municipal corporation or of this City, or the
310 execution of public trusts. For those legal services, that firm shall be paid just and reasonable
311 compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing
312 those legal services. The Director of Finance is authorized and directed to make appropriate
313 certification as to the availability of funds for those fees and any reimbursement and to issue an
314 appropriate order for their timely payment as written statements are submitted by that firm. The
315 amounts necessary to pay those fees and any reimbursement are hereby appropriated from the
316 proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

317
318 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal advisor, are
319 hereby retained. The municipal advisory services shall be in the nature of financial advice and
320 recommendations in connection with the issuance and sale of the Notes. In rendering those

municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 16. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with Chapter 107 of the City's Codified Ordinances.

Section 17. 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 for the City to meet its obligations under contracts for construction of the Improvement and to provide for the health and welfare of the City residents; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force at the earliest period allowed by law.

Passed: 9-13-2021



President of Council



Clerk of Council

Approved: 9-14-2021



Mayor

7/26/21

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