123456789 10

11 12 13 14 15 16 17 18 19 20 21 22 23

26 27 28 29 30

31

32

33

24

25

38

39

40

45

46 47

48 49 50

51 52 53

54

CITY OF CUYAHOGA FALLS, OHIO

65 -2021 ORDINANCE NO.

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$1,245,000. IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF IMPROVING MUNICIPAL PUBLIC INFRASTRUCTURE INCLUDING SOUREK TRAIL, SAND HILL DRIVE, KUBIC DRIVE, WEST WOODLAND DRIVE, EAST WOODLAND DRIVE AND SOUTH WOODLAND DRIVE BETWEEN CERTAIN TERMINI, INCLUDING BUT NOT LIMITED TO THE CONSTRUCTION, RECONSTRUCTION, INSTALLATION OR **IMPROVING** UTILITY OF **PUBLIC** IMPROVEMENTS, COMMUNICATION SERVICE FACILITIES, STORMWATER AND FLOOD REMEDIATION IMPROVEMENTS AND FACILITIES, BRIDGES, STREETS AND ROADWAYS, SIDEWALKS, LIGHTING SYSTEMS, SIGNALIZATION AND TRAFFIC CONTROLS, STORM AND SANITARY SEWERS, AND WATER LINES, STREETSCAPE AND LANDSCAPE IMPROVEMENTS, AND ACQUISITION OF REAL ESTATE OR INTERESTS THEREIN, AND ALL RELATED IMPROVEMENTS AND APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 53-2020 passed September 14, 2020, notes in anticipation of bonds in the amount of \$1,225,000 dated November 17, 2020 (the "Outstanding Notes"), were issued for the purpose stated in Section 1, to mature on November 17, 2021; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City and provide an additional \$20,000 for the purpose stated in Section 1 and to pay capitalized interest; and

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 November 26, 2039 as to \$1,200,000 of the principal amount, November 17, 2040 as to \$25,000 of the principal amount and two hundred forty (240) months as to \$20,000.

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 \$1,245,000 (the "Bonds") for the purpose of paying the costs of improving municipal public infrastructure including Sourek Trail, Sand Hill Drive, Kubic Drive, West Woodland Drive, East Woodland Drive and South Woodland Drive between certain termini, including but not limited to the construction, reconstruction, installation or improving of public utility improvements, communication service facilities, stormwater and flood remediation improvements and facilities, bridges, streets and roadways, sidewalks, lighting systems, signalization and traffic controls, storm and sanitary sewers, and water lines, streetscape and landscape improvements, and 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 times the amount of those payments in any other fiscal year. The first principal installment is estimated to be December 1, 2023.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$1,245,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds for the purpose stated in Section 1, to retire, together with other funds available to the City, the Outstanding Notes, to provide additional money for the purpose stated in Section 1 and to pay capitalized interest and to pay any financing costs. The principal amount of Notes to be issued (not to exceed the stated maximum principal amount) shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this ordinance (the "Certificate of Award") as the amount which, along with other available funds of the City, is necessary to provide for the retirement of the Outstanding Notes, to provide additional money for the purpose stated in Section 1 and to pay capitalized interest (if any) and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature not earlier than six months from that date and not later than 12 months from that date, as shall likewise be fixed by the Director of Finance in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 6.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award in accordance with Section 6 of this ordinance.

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

Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in minimum denominations of \$100,000 (and may be issued in denominations in such amounts in excess thereof as requested by the original purchaser and approved by the Director of Finance) and with numbers as requested by the original purchaser and approved by the Director of Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of

Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this ordinance. As used in this section and this ordinance:

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

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

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

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, (a) 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; (b) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (c) 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 (d) 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 Director 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 Certificate of Award and the Note Purchase Agreement (as hereinafter defined). The Director of Finance shall, in accordance with his determination of the best interests of and financially advantageous 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, to the original purchaser upon payment of the purchase price. The note purchase agreement (the "Note Purchase Agreement") now on file with the Clerk of Council is

approved, and the Mayor and the Director of Finance are authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this ordinance, are not materially adverse to the interests of the City and are approved by the Mayor and the Director of Finance. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the Mayor and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the Mayor and the Director of Finance. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, and any person serving in an interim or acting capacity for any such official, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments, including any paying agent agreement, and to take such actions as are necessary and appropriate to consummate the transactions contemplated by this ordinance. The actions of the Mayor, the Director of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby ratified and confirmed. The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

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

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

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

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

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

 component purpose, the amount of the tax shall be reduced by the amount of the Service Payments so available and appropriated.

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

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

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

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

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

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

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

The Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined

by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes. The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is specifically authorized to designate the Notes as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

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

<u>Section 12</u>. The Clerk of Council is directed to deliver a certified copy of this ordinance to the Fiscal Officer in Summit County.

Section 13. 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 14. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the Clerk of Council. In providing 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 of Ohio, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal 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 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and 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.

<u>Section 16</u>. 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 to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor, 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: 9-19

11----

7/26/21

\\cf-file01\\dpublic\Council\2021ords\07-26-21\\Note Ordinance - Sourek Trail - Second Refunding.docx