

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 91 - 2023

6
7 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
8 SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF
9 \$700,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS,
10 FOR THE PURPOSE OF PAYING THE COSTS OF THE
11 CONSTRUCTION, RECONSTRUCTION, WIDENING,
12 IMPROVING, GRADING, DRAINING AND RESURFACING OF
13 WYOGA LAKE ROAD BETWEEN STEELS CORNERS ROAD
14 AND SEASONS ROAD, TOGETHER WITH ALL RELATED
15 AND NECESSARY APPURTENANCES THERETO, AND
16 DECLARING AN EMERGENCY.

17
18 WHEREAS, this Council has requested that the Director of Finance, as fiscal officer
19 of this City, certify the estimated life or period of usefulness of the Improvement
20 described in Section 1, the estimated maximum maturity of the Bonds described in
21 Section 1 and the maximum maturity of the Notes described in Section 3; and

22
23 WHEREAS, the Director of Finance has certified to this Council that the estimated
24 life or period of usefulness of the Improvement described in Section 1 is at least five (5)
25 years, the estimated maximum maturity of the Bonds described in Section 1 is twenty
26 (20) years, and the maximum maturity of the Notes described in Section 3, to be issued
27 in anticipation of the Bonds, is two hundred forty (240) months.

28
29 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
30 Summit County, Ohio, that:

31
32 Section 1. It is necessary to issue bonds of this City in the maximum principal
33 amount of \$700,000 (the "Bonds") for the purpose of (i) paying the costs of the
34 construction, reconstruction, widening, improving, grading, draining and resurfacing of
35 Wyoga Lake Road between Steels Corners Road and Seasons Road, together with all
36 related and necessary appurtenances thereto (the "Improvement") and (ii) paying
37 capitalized interest.

38
39 Section 2. The Bonds shall be dated approximately November 1, 2024, shall bear
40 interest at the now estimated rate of 6.00% per year, payable on June 1 and December
41 1 of each year, commencing June 1, 2025, until the principal amount is paid, and are
42 estimated to mature in twenty (20) annual principal installments that are in such
43 amounts that the total principal and interest payments on the Bonds in any fiscal year
44 in which principal is payable are not more than three times the amount of those
45 payments in any other fiscal year. The first principal installment is estimated to be
46 December 1, 2025.

47
48 Section 3. It is necessary to issue and this Council determines that notes in the
49 maximum principal amount of \$700,000 (the "Notes") shall be issued in anticipation of
50 the issuance of the Bonds for the purpose stated in Section 1, and to pay the costs of
51 the Improvement, capitalized interest and any financing costs. The principal amount of
52 Notes to be issued (not to exceed the stated maximum principal amount) shall be
53 determined by the Director of Finance in the certificate awarding the Notes in
54 accordance with Section 6 of this ordinance (the "Certificate of Award") as the amount

55 which, along with other available funds of the City, is necessary to pay the costs of the
56 Improvement, capitalized interest (if any) and any financing costs. The Notes shall be
57 dated the date of issuance and shall mature not earlier than six months from that date
58 and not later than 12 months from that date, as shall likewise be fixed by the Director
59 of Finance in the Certificate of Award. The Notes shall bear interest at a rate or rates
60 not to exceed 7.00% per year (computed on the basis of a 360-day year consisting of
61 twelve 30-day months), payable at maturity and until the principal amount is paid or
62 payment is provided for. The rate or rates of interest on the Notes shall be determined
63 by the Director of Finance in the Certificate of Award in accordance with Section 6 of
64 this ordinance.
65

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

79 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the
80 name of the City and in their official capacities, provided that one of those signatures
81 may be a facsimile. The Notes shall be issued in the denominations and numbers as
82 requested by the original purchaser and approved by the Director of Finance, provided
83 that no Note shall be issued in a minimum denomination less than \$100,000 if such
84 Notes are consolidated with any other note issue of the City pursuant to Section
85 133.30(B) of the Ohio Revised Code and the aggregate principal amount of such
86 consolidated issue equals or exceeds \$1,000,000. The entire principal amount may be
87 represented by a single note and may be issued as fully registered securities (for which
88 the Director of Finance will serve as note registrar) and in book entry or other
89 uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio
90 Revised Code if it is determined by the Director of Finance that issuance of fully
91 registered securities in that form will facilitate the sale and delivery of the Notes. The
92 Notes shall not have coupons attached, shall be numbered as determined by the
93 Director of Finance and shall express upon their faces the purpose, in summary terms,
94 for which they are issued and that they are issued pursuant to this ordinance. As used
95 in this section and this ordinance:
96

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

106 "Depository" means any securities depository that is a clearing agency registered
107 pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934,
108 operating and maintaining, with its Participants or otherwise, a book entry system to

109 record ownership of beneficial interests in the Notes or the principal of and interest on
110 the Notes, and to effect transfers of the Notes, in book entry form, and includes and
111 means initially The Depository Trust Company (a limited purpose trust company), New
112 York, New York.

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

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

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

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

145
146 Section 6. The Notes shall be sold at not less than 97% of the par value thereof at
147 private sale by the Director of Finance in accordance with law and the provisions of this
148 ordinance, the Certificate of Award and the Note Purchase Agreement (as hereinafter
149 defined). The Director of Finance shall, in accordance with his determination of the best
150 interests of and financially advantageous to the City and its taxpayers and conditions
151 then existing in the financial market, consistently with the provisions of Sections 3 and
152 4, establish the interest rates to be borne by the Notes and their maturity, sign the
153 Certificate of Award referred to in Sections 3 and 4 evidencing those determinations,
154 cause the Notes to be prepared, and have the Notes signed and delivered, together with
155 a true transcript of proceedings with reference to the issuance of the Notes, if requested
156 by the original purchaser, to the original purchaser upon payment of the purchase price.

157
158 The note purchase agreement (the “Note Purchase Agreement”) now on file with the
159 Clerk of Council is approved, and the Mayor and the Director of Finance are authorized
160 to sign and deliver, on behalf of the City, the Note Purchase Agreement with such
161 changes that are not inconsistent with the provisions of this ordinance, are not
162 materially adverse to the interests of the City and are approved by the Mayor and the

163 Director of Finance. Any such changes to the Note Purchase Agreement are not
164 materially adverse to the interests of the City and are approved by the Mayor and the
165 Director of Finance shall be evidenced conclusively by the signing of the Note Purchase
166 Agreement by the Mayor and the Director of Finance. The Mayor, the Director of
167 Finance, the Director of Law, the Clerk of Council and other City officials, as
168 appropriate, and any person serving in an interim or acting capacity for any such
169 official, are each authorized and directed to sign any transcript certificates, financial
170 statements and other documents and instruments, including any paying agent
171 agreement, and to take such actions as are necessary and appropriate to consummate
172 the transactions contemplated by this ordinance. The actions of the Mayor, the Director
173 of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate,
174 in doing any and all acts necessary in connection with the issuance and sale of the
175 Notes are hereby ratified and confirmed. The Director of Finance is authorized, if it is
176 determined to be in the best interest of the City, to combine the issue of Notes with one
177 or more other note issues of the City into a consolidated note issue pursuant to
178 Section 133.30(B) of the Ohio Revised Code.
179

180 The Director of Finance is also hereby authorized to offer all or part of the Notes at
181 par and any accrued interest to the Treasury Investment Board of the City for
182 investment under Section 731.56 of the Ohio Revised Code, in accordance with law and
183 the provisions of this ordinance if, as a result of the conditions then existing in the
184 financial markets, the Director of Finance determines it is in the best financial interest
185 of the City in lieu of the private sale authorized in the preceding paragraph and which
186 determination shall be set forth in the Certificate of Award.
187

188 Section 7. The proceeds from the sale of the Notes received by the City (or withheld
189 by the original purchaser or deposited with the Paying Agent, in each case on behalf of
190 the City) shall be paid into the proper fund or funds, and those proceeds are
191 appropriated and shall be used for the purpose for which the Notes are being issued.
192 The Certificate of Award may authorize the original purchaser to (a) withhold certain
193 proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the
194 Notes to the Paying Agent, in each case to provide for the payment of certain financing
195 costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance
196 with this Section 7, the Paying Agent shall be authorized to create a fund in accordance
197 with the Certificate of Award for that purpose. Any portion of those proceeds received
198 by the City (after payment of those financing costs) representing premium or accrued
199 interest shall be paid into the Bond Retirement Fund.
200

201 Section 8. The par value to be received from the sale of the Bonds or of any renewal
202 notes and any excess funds resulting from the issuance of the Notes shall, to the extent
203 necessary, be used to pay the debt charges on the Notes at maturity and are pledged for
204 that purpose.
205

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

217 In each year to the extent the service payments in lieu of real property taxes (the
218 "Service Payments") deposited into the Pine Ridge Incentive District Municipal Public
219 Improvement Tax Increment Equivalent Fund created pursuant to Section 5709.43(A)
220 of the Ohio Revised Code and Ordinance No. 115-2021 passed December 13, 2021 (the
221 "TIF Ordinance") are available for the payment of the debt charges on the Notes or the
222 Bonds and are appropriated for that purpose, the amount of the tax shall be reduced
223 by the amount of the Service Payments so available and appropriated.
224

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

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

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

249 The City further covenants that (a) it will take or cause to be taken such actions that
250 may be required of it for the interest on the Notes to be and remain excluded from gross
251 income for federal income tax purposes, (b) it will not take or authorize to be taken any
252 actions that would adversely affect that exclusion, and (c) it, or persons acting for it,
253 will, among other acts of compliance, (i) apply the proceeds of the Notes to the
254 governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii)
255 make timely and adequate payments to the federal government, (iv) maintain books and
256 records and make calculations and reports and (v) refrain from certain uses of those
257 proceeds, and, as applicable, of property financed with such proceeds, all in such
258 manner and to the extent necessary to assure such exclusion of that interest under the
259 Code.
260

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

271 action shall be in writing and signed by the officer, (b) to take any and all other actions,
272 make or obtain calculations, make payments, and make or give reports, covenants and
273 certifications of and on behalf of the City, as may be appropriate to assure the exclusion
274 of interest from gross income and the intended tax status of the Notes, and (c) to give
275 one or more appropriate certificates of the City, for inclusion in the transcript of
276 proceedings for the Notes, setting forth the reasonable expectations of the City regarding
277 the amount and use of all the proceeds of the Notes, the facts, circumstances and
278 estimates on which they are based, and other facts and circumstances relevant to the
279 tax treatment of the interest on and the tax status of the Notes. The Director of Finance
280 or any other officer of the City having responsibility for issuance of the Notes is
281 specifically authorized to designate the Notes as "qualified tax-exempt obligations" if
282 such designation is applicable and desirable, and to make any related necessary
283 representations and covenants.
284

285 Section 11. The Director of Finance is authorized to request a rating for the Notes
286 from Moody's Investors Service, Inc. or S&P Global Ratings, or both, as the Director of
287 Finance determines is in the best interest of the City. The expenditure of the amounts
288 necessary to secure any such ratings as well as to pay the other financing costs (as
289 defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is
290 hereby authorized and approved and the amounts necessary to pay those costs are
291 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
292 available moneys in the General Fund.
293

294 Section 12. The Clerk of Council is directed to deliver a certified copy of this
295 ordinance to the Fiscal Officer in Summit County.
296

297 Section 13. This Council determines that all acts and conditions necessary to be
298 done or performed by the City or to have been met precedent to and in the issuing of
299 the Notes in order to make them legal, valid and binding general obligations of the City
300 have been performed and have been met, or will at the time of delivery of the Notes have
301 been performed and have been met, in regular and due form as required by law; that
302 the full faith and credit and general property taxing power (as described in Section 9) of
303 the City are pledged for the timely payment of the debt charges on the Notes; and that
304 no statutory or constitutional limitation of indebtedness or taxation will have been
305 exceeded in the issuance of the Notes.
306

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


325 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
326 available moneys in the General Fund.
327

328 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal
329 advisor, are hereby retained. The municipal advisory services shall be in the nature of
330 financial advice and recommendations in connection with the issuance and sale of the
331 Notes. In rendering those municipal advisory services, as an independent contractor,
332 that firm shall not exercise any administrative discretion on behalf of the City in the
333 formulation of public policy, expenditure of public funds, enforcement of laws, rules and
334 regulations of the State of Ohio, the City or any other political subdivision, or the
335 execution of public trusts. That firm shall be paid just and reasonable compensation
336 for those municipal advisory services and shall be reimbursed for the actual out-of-
337 pocket expenses it incurs in rendering those municipal advisory services. To the extent
338 they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the
339 Certificate of Award, the Director of Finance is authorized and directed to make
340 appropriate certification as to the availability of funds for those fees and any
341 reimbursement and to issue an appropriate order for their timely payment as written
342 statements are submitted by that firm. The amounts necessary to pay those fees and
343 any reimbursement are hereby appropriated from the proceeds of the Notes, if available,
344 and otherwise from available moneys in the General Fund.
345


346 Section 16. This Council finds and determines that all formal actions of this Council
347 and any of its committees concerning and relating to the passage of this ordinance were
348 taken in an open meeting of this Council or any of its committees, and that all
349 deliberations of this Council and of any of its committees that resulted in those formal
350 actions were in meetings open to the public, all in compliance with Chapter 107 of the
351 City's Codified Ordinances.
352

353 Section 17. This ordinance is declared to be an emergency measure necessary for
354 the immediate preservation of the public peace, health and safety of the City, and for
355 the further reason that this ordinance is required to be immediately effective in order to
356 issue and sell the Notes, which is necessary for the City to meet its obligations under
357 contracts for construction of the Improvement and to provide for the health and welfare
358 of the City residents; wherefore, this ordinance shall be in full force and effect
359 immediately upon its passage and approval by the Mayor, otherwise it shall take effect
360 and be in force at the earliest period allowed by law.
361

362
363 Passed: 9-11-2023
364

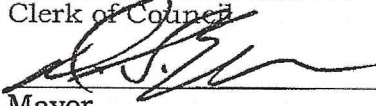


President of Council



Clerk of Council

365
366
367
368 Approved: 9-11-2023
369




Mayor

370
371 7/24/23

372 \\CF-FILE04\LDpublic\Council\2023ords\07-24-23\Wyoga Lake Road Improvements
373 Note.docx

The Undersigned, the duly appointed and qualified Clerk of Council of the City of Cuyahoga Falls, County of Summit, and State of Ohio does hereby certify that this is a true copy of the original ORDINANCE adopted at a meeting of Council duly held on the 11 day of September, 2023.

Dated this 12th day of September, 2023!



Clerk of Council