

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 92 -2023
6

7 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
8 SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF
9 \$350,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS,
10 FOR THE PURPOSE OF PAYING THE COSTS OF THE
11 DESIGN AND ENGINEERING, CONSTRUCTION,
12 RECONSTRUCTION, WIDENING, IMPROVING, GRADING,
13 DRAINING AND RESURFACING OF, AND INSTALLATION OF
14 TRAFFIC CONTROLS ALONG, AND THE INTERSECTIONS
15 OF, STATE ROAD, SEASONS ROAD AND WYOGA LAKE
16 ROAD, AND A TRAFFIC STUDY OF THOSE ROADS AND
17 RELATED AREAS, INCLUDING BUT NOT LIMITED TO THE
18 EXTENSION, OPENING, IMPROVING, CURBING OR
19 CHANGING OF THE LINES AND TRAFFIC PATTERNS OF
20 ROADS, HIGHWAYS, STREETS, INTERSECTIONS,
21 BRIDGES (BOTH ROADWAY AND PEDESTRIAN),
22 SIDEWALKS, BIKEWAYS, MEDIANS AND VIADUCTS,
23 PROVIDING SIGNAGE, LIGHTING SYSTEMS,
24 SIGNALIZATION, AND INSTALLATION OF STORMWATER
25 AND FLOOD REMEDIATION FACILITIES, TOGETHER WITH
26 ALL RELATED AND NECESSARY APPURTENANCES
27 THERETO, AND DECLARING AN EMERGENCY.
28

29 WHEREAS, this Council has requested that the Director of Finance, as fiscal officer
30 of this City, certify the estimated life or period of usefulness of the Improvement
31 described in Section 1, the estimated maximum maturity of the Bonds described in
32 Section 1 and the maximum maturity of the Notes described in Section 3; and
33

34 WHEREAS, the Director of Finance has certified to this Council that the estimated
35 life or period of usefulness of the Improvement described in Section 1 is at least five (5)
36 years, the estimated maximum maturity of the Bonds described in Section 1 is twenty
37 (20) years, and the maximum maturity of the Notes described in Section 3, to be issued
38 in anticipation of the Bonds, is two hundred forty (240) months;
39

40 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
41 Summit County, Ohio, that:
42

43 Section 1. It is necessary to issue bonds of this City in the maximum principal
44 amount of \$350,000 (the "Bonds") for the purpose of (i) paying the costs of the design
45 and engineering, construction, reconstruction, widening, improving, grading, draining
46 and resurfacing of, and installation of traffic controls along, and the intersections of,
47 State Road, Seasons Road and Wyoga Lake Road, and a traffic study of those roads and
48 related areas, including but not limited to the extension, opening, improving, curbing
49 or changing of the lines and traffic patterns of roads, highways, streets, intersections,
50 bridges (both roadway and pedestrian), sidewalks, bikeways, medians and viaducts,
51 providing signage, lighting systems, signalization, and installation of stormwater and
52 flood remediation facilities, together with all related and necessary appurtenances
53 thereto (the "Improvement") and (ii) paying capitalized interest.

54 Section 2. The Bonds shall be dated approximately November 1, 2024, shall bear
55 interest at the now estimated rate of 6.00% per year, payable on June 1 and December
56 1 of each year, commencing June 1, 2025, until the principal amount is paid, and are
57 estimated to mature in twenty (20) annual principal installments that are in such
58 amounts that the total principal and interest payments on the Bonds in any fiscal year
59 in which principal is payable are not more than three times the amount of those
60 payments in any other fiscal year. The first principal installment is estimated to be
61 December 1, 2025.
62

63 Section 3. It is necessary to issue and this Council determines that notes in the
64 maximum principal amount of \$350,000 (the "Notes") shall be issued in anticipation of
65 the issuance of the Bonds for the purpose stated in Section 1, and to pay the costs of
66 the Improvement, capitalized interest and any financing costs. The principal amount of
67 Notes to be issued (not to exceed the stated maximum principal amount) shall be
68 determined by the Director of Finance in the certificate awarding the Notes in
69 accordance with Section 6 of this ordinance (the "Certificate of Award") as the amount
70 which, along with other available funds of the City, is necessary to pay the costs of the
71 Improvement, capitalized interest (if any) and any financing costs. The Notes shall be
72 dated the date of issuance and shall mature not earlier than six months from that date
73 and not later than 12 months from that date, as shall likewise be fixed by the Director
74 of Finance in the Certificate of Award. The Notes shall bear interest at a rate or rates
75 not to exceed 7.00% per year (computed on the basis of a 360-day year consisting of
76 twelve 30-day months), payable at maturity and until the principal amount is paid or
77 payment is provided for. The rate or rates of interest on the Notes shall be determined
78 by the Director of Finance in the Certificate of Award in accordance with Section 6 of
79 this ordinance.
80

81 Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds
82 of the United States of America, and shall be payable, without deduction for services of
83 the City's paying agent, at the designated corporate trust office of The Huntington
84 National Bank or at the office of a bank or trust company designated by the Director of
85 Finance in the Certificate of Award after determining that the payment at that bank or
86 trust company will not endanger the funds or securities of the City and that proper
87 procedures and safeguards are available for that purpose or at the office of the Director
88 of Finance if agreed to by the Director of Finance and the original purchaser (the "Paying
89 Agent"). The Director of Finance is authorized, to the extent necessary or appropriate,
90 to enter into an agreement with the Paying Agent in connection with the services to be
91 provided by the Paying Agent after determining that the signing thereof will not endanger
92 the funds or securities of the City.
93

94 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the
95 name of the City and in their official capacities, provided that one of those signatures
96 may be a facsimile. The Notes shall be issued in the denominations and numbers as
97 requested by the original purchaser and approved by the Director of Finance, provided
98 that no Note shall be issued in a minimum denomination less than \$100,000 if such
99 Notes are consolidated with any other note issue of the City pursuant to Section
100 133.30(B) of the Ohio Revised Code and the aggregate principal amount of such
101 consolidated issue equals or exceeds \$1,000,000. The entire principal amount may be
102 represented by a single note and may be issued as fully registered securities (for which
103 the Director of Finance will serve as note registrar) and in book entry or other
104 uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio
105 Revised Code if it is determined by the Director of Finance that issuance of fully
106 registered securities in that form will facilitate the sale and delivery of the Notes. The
107 Notes shall not have coupons attached, shall be numbered as determined by the

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

111
112 “Book entry form” or “book entry system” means a form or system under which (a)
113 the ownership of beneficial interests in the Notes and the principal of and interest on
114 the Notes may be transferred only through a book entry, and (b) a single physical Note
115 certificate in fully registered form is issued by the City and payable only to a Depository
116 or its nominee as registered owner, with the certificate deposited with and “immobilized”
117 in the custody of the Depository or its designated agent for that purpose. The book
118 entry maintained by others than the City is the record that identifies the owners of
119 beneficial interests in the Notes and that principal and interest.

120
121 “Depository” means any securities depository that is a clearing agency registered
122 pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934,
123 operating and maintaining, with its Participants or otherwise, a book entry system to
124 record ownership of beneficial interests in the Notes or the principal of and interest on
125 the Notes, and to effect transfers of the Notes, in book entry form, and includes and
126 means initially The Depository Trust Company (a limited purpose trust company), New
127 York, New York.

128
129 “Participant” means any participant contracting with a Depository under a book
130 entry system and includes securities brokers and dealers, banks and trust companies
131 and clearing corporations.

132
133 The Notes may be issued to a Depository for use in a book entry system and, if and
134 as long as a book entry system is utilized, (a) the Notes may be issued in the form of a
135 single Note made payable to the Depository or its nominee and immobilized in the
136 custody of the Depository or its agent for that purpose; (b) the beneficial owners in book
137 entry form shall have no right to receive the Notes in the form of physical securities or
138 certificates; (c) ownership of beneficial interests in book entry form shall be shown by
139 book entry on the system maintained and operated by the Depository and its
140 Participants, and transfers of the ownership of beneficial interests shall be made only
141 by book entry by the Depository and its Participants; and (d) the Notes as such shall
142 not be transferable or exchangeable, except for transfer to another Depository or to
143 another nominee of a Depository, without further action by the City.

144
145 If any Depository determines not to continue to act as a Depository for the Notes for
146 use in a book entry system, the Director of Finance may attempt to establish a securities
147 depository/book entry relationship with another qualified Depository. If the Director of
148 Finance does not or is unable to do so, the Director of Finance, after making provision
149 for notification of the beneficial owners by the then Depository and any other
150 arrangements deemed necessary, shall permit withdrawal of the Notes from the
151 Depository, and shall cause the Notes in bearer or payable form to be signed by the
152 officers authorized to sign the Notes and delivered to the assigns of the Depository or its
153 nominee, all at the cost and expense (including any costs of printing), if the event is not
154 the result of City action or inaction, of those persons requesting such issuance.

155
156 The Director of Finance is also hereby authorized and directed, to the extent
157 necessary or required, to enter into any agreements determined necessary in connection
158 with the book entry system for the Notes, after determining that the signing thereof will
159 not endanger the funds or securities of the City.

160 Section 6. The Notes shall be sold at not less than 97% of the par value thereof at
161 private sale by the Director of Finance in accordance with law and the provisions of this
162 ordinance, the Certificate of Award and the Note Purchase Agreement (as hereinafter
163 defined). The Director of Finance shall, in accordance with his determination of the best
164 interests of and financially advantageous to the City and its taxpayers and conditions
165 then existing in the financial market, consistently with the provisions of Sections 3 and
166 4, establish the interest rates to be borne by the Notes and their maturity, sign the
167 Certificate of Award referred to in Sections 3 and 4 evidencing those determinations,
168 cause the Notes to be prepared, and have the Notes signed and delivered, together with
169 a true transcript of proceedings with reference to the issuance of the Notes, if requested
170 by the original purchaser, to the original purchaser upon payment of the purchase price.
171

172 The note purchase agreement (the "Note Purchase Agreement") now on file with the
173 Clerk of Council is approved, and the Mayor and the Director of Finance are authorized
174 to sign and deliver, on behalf of the City, the Note Purchase Agreement with such
175 changes that are not inconsistent with the provisions of this ordinance, are not
176 materially adverse to the interests of the City and are approved by the Mayor and the
177 Director of Finance. Any such changes to the Note Purchase Agreement are not
178 materially adverse to the interests of the City and are approved by the Mayor and the
179 Director of Finance shall be evidenced conclusively by the signing of the Note Purchase
180 Agreement by the Mayor and the Director of Finance. The Mayor, the Director of
181 Finance, the Director of Law, the Clerk of Council and other City officials, as
182 appropriate, and any person serving in an interim or acting capacity for any such
183 official, are each authorized and directed to sign any transcript certificates, financial
184 statements and other documents and instruments, including any paying agent
185 agreement, and to take such actions as are necessary and appropriate to consummate
186 the transactions contemplated by this ordinance. The actions of the Mayor, the Director
187 of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate,
188 in doing any and all acts necessary in connection with the issuance and sale of the
189 Notes are hereby ratified and confirmed. The Director of Finance is authorized, if it is
190 determined to be in the best interest of the City, to combine the issue of Notes with one
191 or more other note issues of the City into a consolidated note issue pursuant to
192 Section 133.30(B) of the Ohio Revised Code.
193

194 The Director of Finance is also hereby authorized to offer all or part of the Notes at
195 par and any accrued interest to the Treasury Investment Board of the City for
196 investment under Section 731.56 of the Ohio Revised Code, in accordance with law and
197 the provisions of this ordinance if, as a result of the conditions then existing in the
198 financial markets, the Director of Finance determines it is in the best financial interest
199 of the City in lieu of the private sale authorized in the preceding paragraph and which
200 determination shall be set forth in the Certificate of Award.
201

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

214 Section 8. The par value to be received from the sale of the Bonds or of any renewal
215 notes and any excess funds resulting from the issuance of the Notes shall, to the extent
216 necessary, be used to pay the debt charges on the Notes at maturity and are pledged for
217 that purpose.
218

219 Section 9. During the year or years in which the Notes are outstanding, there shall
220 be levied on all the taxable property in the City, in addition to all other taxes, the same
221 tax that would have been levied if the Bonds had been issued without the prior issuance
222 of the Notes. The tax shall be within the eleven-mill limitation provided by the Charter
223 of the City, shall be and is ordered computed, certified, levied and extended upon the
224 tax duplicate and collected by the same officers, in the same manner, and at the same
225 time that taxes for general purposes for each of those years are certified, levied, extended
226 and collected, and shall be placed before and in preference to all other items and for the
227 full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement
228 Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or
229 the Bonds when and as the same fall due.
230

231 In each year to the extent the service payments in lieu of real property taxes (the
232 "Service Payments") deposited into the Pine Ridge Incentive District Municipal Public
233 Improvement Tax Increment Equivalent Fund created pursuant to Section 5709.43(A)
234 of the Ohio Revised Code and Ordinance No. 115-2021 passed December 13, 2021 (the
235 "TIF Ordinance") are available for the payment of the debt charges on the Notes or the
236 Bonds and are appropriated for that purpose, the amount of the tax shall be reduced
237 by the amount of the Service Payments so available and appropriated.
238

239 In each year to the extent receipts from the municipal income tax are available for
240 the payment of the debt charges on the Notes or the Bonds and are appropriated for
241 that purpose, and to the extent not paid from the Service Payments, the amount of the
242 tax shall be reduced by the amount of such receipts so available and appropriated in
243 compliance with the following covenant. To the extent necessary, the debt charges on
244 the Notes or the Bonds shall be paid from municipal income taxes lawfully available
245 therefor under the Constitution and the laws of the State of Ohio, and the Charter of
246 the City; and the City hereby covenants, subject and pursuant to such authority,
247 including particularly Section 133.05(B)(7) of the Ohio Revised Code, to appropriate
248 annually from such municipal income taxes such amount as is necessary to meet such
249 annual debt charges.
250

251 Nothing in the two preceding paragraphs in any way diminishes the irrevocable
252 pledge of the full faith and credit and general property taxing power of the City to the
253 prompt payment of the debt charges on the Notes and the Bonds.
254

255 Section 10. The City covenants that it will use, and will restrict the use and
256 investment of, the proceeds of the Notes in such manner and to such extent, as may be
257 necessary so that (a) the Notes will not (i) constitute private activity bonds or arbitrage
258 bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended
259 (the "Code") or (ii) be treated other than as bonds the interest on which is excluded from
260 gross income under Section 103 of the Code, and (b) the interest on the Notes will not
261 be an item of tax preference under Section 57 of the Code.
262

263 The City further covenants that (a) it will take or cause to be taken such actions that
264 may be required of it for the interest on the Notes to be and remain excluded from gross
265 income for federal income tax purposes, (b) it will not take or authorize to be taken any
266 actions that would adversely affect that exclusion, and (c) it, or persons acting for it,
267 will, among other acts of compliance, (i) apply the proceeds of the Notes to the

268 governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii)
269 make timely and adequate payments to the federal government, (iv) maintain books and
270 records and make calculations and reports and (v) refrain from certain uses of those
271 proceeds, and, as applicable, of property financed with such proceeds, all in such
272 manner and to the extent necessary to assure such exclusion of that interest under the
273 Code.

274
275 The Director of Finance, as the fiscal officer, or any other officer of the City having
276 responsibility for issuance of the Notes is hereby authorized (a) to make or effect any
277 election, selection, designation, choice, consent, approval, or waiver on behalf of the City
278 with respect to the Notes as the City is permitted to or required to make or give under
279 the federal income tax laws, for the purpose of assuring, enhancing or protecting
280 favorable tax treatment or status of the Notes or interest thereon or assisting compliance
281 with requirements for that purpose, reducing the burden or expense of such compliance,
282 reducing the rebate amount or payments or penalties, or making payments of special
283 amounts in lieu of making computations to determine, or paying, excess earnings as
284 rebate, or obviating those amounts or payments, as determined by that officer, which
285 action shall be in writing and signed by the officer, (b) to take any and all other actions,
286 make or obtain calculations, make payments, and make or give reports, covenants and
287 certifications of and on behalf of the City, as may be appropriate to assure the exclusion
288 of interest from gross income and the intended tax status of the Notes, and (c) to give
289 one or more appropriate certificates of the City, for inclusion in the transcript of
290 proceedings for the Notes, setting forth the reasonable expectations of the City regarding
291 the amount and use of all the proceeds of the Notes, the facts, circumstances and
292 estimates on which they are based, and other facts and circumstances relevant to the
293 tax treatment of the interest on and the tax status of the Notes. The Director of Finance
294 or any other officer of the City having responsibility for issuance of the Notes is
295 specifically authorized to designate the Notes as "qualified tax-exempt obligations" if
296 such designation is applicable and desirable, and to make any related necessary
297 representations and covenants.

298
299 Section 11. The Director of Finance is authorized to request a rating for the Notes
300 from Moody's Investors Service, Inc. or S&P Global Ratings, or both, as the Director of
301 Finance determines is in the best interest of the City. The expenditure of the amounts
302 necessary to secure any such ratings as well as to pay the other financing costs (as
303 defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is
304 hereby authorized and approved and the amounts necessary to pay those costs are
305 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
306 available moneys in the General Fund.

307
308 Section 12. The Clerk of Council is directed to deliver a certified copy of this
309 ordinance to the Fiscal Officer in Summit County.

310
311 Section 13. This Council determines that all acts and conditions necessary to be
312 done or performed by the City or to have been met precedent to and in the issuing of
313 the Notes in order to make them legal, valid and binding general obligations of the City
314 have been performed and have been met, or will at the time of delivery of the Notes have
315 been performed and have been met, in regular and due form as required by law; that
316 the full faith and credit and general property taxing power (as described in Section 9) of
317 the City are pledged for the timely payment of the debt charges on the Notes; and that
318 no statutory or constitutional limitation of indebtedness or taxation will have been
319 exceeded in the issuance of the Notes.

320 Section 14. The legal services of the law firm of Squire Patton Boggs (US) LLP are
321 hereby retained. Those legal services shall be in the nature of legal advice and
322 recommendations as to the documents and the proceedings in connection with the
323 authorization, sale and issuance of the Notes and securities issued in renewal of the
324 Notes and rendering at delivery related legal opinions, all as set forth in the form of
325 engagement letter from that firm which is now on file in the office of the Clerk of Council.
326 In providing those legal services, as an independent contractor and in an attorney-client
327 relationship, that firm shall not exercise any administrative discretion on behalf of this
328 City in the formulation of public policy, expenditure of public funds, enforcement of
329 laws, rules and regulations of the State of Ohio, any county or municipal corporation or
330 of this City, or the execution of public trusts. For those legal services, that firm shall
331 be paid just and reasonable compensation and shall be reimbursed for actual out-of-
332 pocket expenses incurred in providing those legal services. To the extent they are not
333 paid or reimbursed pursuant to the Note Purchase Agreement and/or the Certificate of
334 Award, the Director of Finance is authorized and directed to make appropriate
335 certification as to the availability of funds for those fees and any reimbursement and to
336 issue an appropriate order for their timely payment as written statements are submitted
337 by that firm. The amounts necessary to pay those fees and any reimbursement are
338 hereby appropriated from the proceeds of the Notes, if available, and otherwise from
339 available moneys in the General Fund.
340

341 Section 15. The services of Baker Tilly Municipal Advisors, LLC, as municipal
342 advisor, are hereby retained. The municipal advisory services shall be in the nature of
343 financial advice and recommendations in connection with the issuance and sale of the
344 Notes. In rendering those municipal advisory services, as an independent contractor,
345 that firm shall not exercise any administrative discretion on behalf of the City in the
346 formulation of public policy, expenditure of public funds, enforcement of laws, rules and
347 regulations of the State of Ohio, the City or any other political subdivision, or the
348 execution of public trusts. That firm shall be paid just and reasonable compensation
349 for those municipal advisory services and shall be reimbursed for the actual out-of-
350 pocket expenses it incurs in rendering those municipal advisory services. To the extent
351 they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the
352 Certificate of Award, the Director of Finance is authorized and directed to make
353 appropriate certification as to the availability of funds for those fees and any
354 reimbursement and to issue an appropriate order for their timely payment as written
355 statements are submitted by that firm. The amounts necessary to pay those fees and
356 any reimbursement are hereby appropriated from the proceeds of the Notes, if available,
357 and otherwise from available moneys in the General Fund.
358

359 Section 16. This Council finds and determines that all formal actions of this Council
360 and any of its committees concerning and relating to the passage of this ordinance were
361 taken in an open meeting of this Council or any of its committees, and that all
362 deliberations of this Council and of any of its committees that resulted in those formal
363 actions were in meetings open to the public, all in compliance with Chapter 107 of the
364 City's Codified Ordinances.
365

366 Section 17. This ordinance is declared to be an emergency measure necessary for
367 the immediate preservation of the public peace, health and safety of the City, and for
368 the further reason that this ordinance is required to be immediately effective in order to
369 issue and sell the Notes, which is necessary for the City to meet its obligations under
370 contracts for construction of the Improvement and to provide for the health and welfare
371 of the City residents; wherefore, this ordinance shall be in full force and effect
372 immediately upon its passage and approval by the Mayor, otherwise it shall take effect
373 and be in force at the earliest period allowed by law.

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Passed: 9-11-2023

J. James
President of Council

D. M. Lawrence
Clerk of Council

Approved: 9-11-2023

[Signature]
Mayor

7/24/23
\\cf-file04\LDpublic\Council\2023ords\09-05-23\Sub Wyoga Lake Road Intersection
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

[Signature]
Clerk of Council