

EMERGENCY ORDINANCE NO. 1-95
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER C. Mark Kingsford
ON THE 16TH DAY OF JANUARY, 1995

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$1,310,000 NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF RECONSTRUCTING AND WIDENING SOUTH MAIN STREET TO FOUR LANES WITH RAISED MEDIANS AND LEFT TURN LANES FROM EDENHURST DRIVE TO SHEEHAN ROAD, INCLUDING PROVIDING CURBS, STORM SEWERS, SIDEWALKS, WATER MAIN ADJUSTMENTS, STREET LIGHTING, TRAFFIC SIGNALS AND TRAFFIC SIGNAL IMPROVEMENTS, AND ACQUIRING RIGHT-OF-WAY, TOGETHER WITH ALL NECESSARY RESTORATION, APPURTENANCES AND MISCELLANEOUS WORK, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Emergency Ordinance No. 10-94 passed April 4, 1994, notes in anticipation of bonds in the amount of \$1,270,000, dated April 20, 1994 (the Outstanding Notes), were issued for the purpose stated in Section 1, to mature on February 2, 1995; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 4 and provide an additional \$40,000 for the purpose stated in Section 1; and

WHEREAS, the Director of Finance has certified that the estimated life or period of usefulness of the improvement is at least five years and that the estimated maximum maturity of the bonds is 17 years based upon the weighted average of the amounts allocated to the several classes of improvements set forth in the Fiscal Officer's Certificate, which allocation is approved, ratified, and confirmed, and the maximum maturity of the notes is 20 years; now, therefore,

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. That this Council hereby declares that an emergency exists affecting the public welfare, in that the Notes authorized by this emergency ordinance must be sold without delay in order to provide funds to retire the Outstanding Notes maturing on February 2, 1995 and thereby maintain the credit standing of the City.

SECTION 2. That it is necessary to issue bonds of this City in the aggregate principal amount of \$1,310,000 (the Bonds) for the purpose of reconstructing and widening South Main Street to four lanes with raised medians and left turn lanes from Edenhurst Drive to Sheehan Road, including providing curbs, storm sewers, sidewalks, water main adjustments, street lighting, traffic signals and traffic signal improvements, and acquiring right-of-way, together with all necessary restoration, appurtenances and miscellaneous work.

SECTION 3. That the Bonds shall be dated approximately February 1, 1996, shall bear interest at the now estimated rate of 6-1/4% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 17 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 substantially equal.

SECTION 4. That it is necessary to issue and this Council determines that notes in the aggregate principal amount of \$1,310,000 shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes, and to provide additional money for the purpose stated in Section 1. The Notes shall bear interest at rates not to exceed 8-1/2% per year (computed on a 360-day per year basis), payable at maturity and until the principal amount is paid or payment is provided for. If requested by the original purchaser, the Notes may provide that, in the event the City does not pay or make provision for payment at maturity of the debt

charges on the Notes, the principal amount of the Notes shall bear interest at different rate not to exceed 9-1/2% per year from the maturity date until the City pays or makes provision to pay that principal amount. The rate of interest on the Notes shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 7 of this ordinance. The Notes shall be dated February 2, 1995, and shall mature on February 1, 1996.

SECTION 5. That the debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America if so requested by the original purchaser, and shall be payable, without deduction for services of the City's paying agent, at the main office of The Fifth Third Bank, Cincinnati, Ohio or at the principal office of a bank or trust company requested by the original purchaser of the Notes, provided that such request shall be approved by the Director of Finance after determining that the payment at the requested 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 (the Paying Agent).

SECTION 6. That the Notes shall be signed by the Mayor or Deputy-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 the denominations and numbers as requested by the original purchaser of the Notes and approved by the Director of Finance, provided that the entire principal amount may be represented by a single note. If the Notes are not issued as a single note, the Notes shall be issued in the denominations of \$100,000 each or in any denomination that is the sum of (i) \$100,000 and (ii) \$5,000 or any whole multiple thereof and are not exchangeable for Notes in denominations less than \$100,000. 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.

SECTION 7. That the Notes shall be sold at not less than par at private sale by the Director of Finance in accordance with law and the provisions of this ordinance. The Director of Finance shall sign the certificate of award referred to in Section 4 evidencing that sale, 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 Mayor or Deputy-Mayor, the Director of Finance, the City Manager, and the Clerk of Council, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance. 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 Revised Code.

SECTION 8. That the proceeds from the sale of the Notes, except any premium and accrued interest, 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. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 9. That 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 10. That 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 ten-mill limitation imposed by law, 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 money from the municipal income tax is available for the payment of the debt charges on the Notes and Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth.

To the extent necessary, the debt charges on the Notes and the Bonds shall be paid from municipal income taxes lawfully available therefore under the Constitution and 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), Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges. Nothing in this section in any way diminishes the irrevocable pledge of the full faith

and credit and revenues of the City to the prompt payment of the debt charges on the Notes and Bonds.

SECTION 11. That 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, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be treated as 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 City represents that \$1,270,000 principal amount of the Notes are treated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Outstanding Notes, from proceeds of, and within 90 days after the issuance of the Notes, and represents that all other conditions are met for treating the Notes

that provide for the current refunding of \$1,270,000 principal amount of the Outstanding Notes as "qualified tax-exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code.

The balance of the Notes (\$40,000) are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including \$40,000 of the Notes, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue tax-exempt obligations (including \$40,000 of the Notes), but excluding obligations other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations."

The City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations", it has not formed or participated in the formation of, or benefitted from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form,

participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

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.

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.

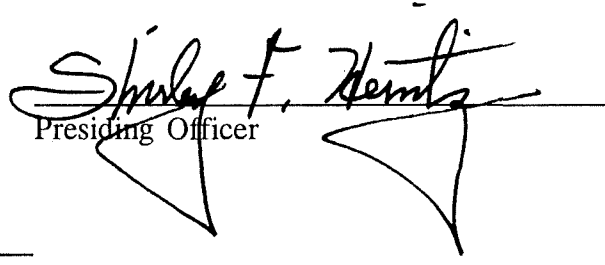
SECTION 12. That the Clerk of Council is directed to deliver a certified copy of this ordinance to the County Auditor.


SECTION 13. That 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 10) 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. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 15. That this ordinance shall become effective upon its adoption, in accordance with Section 5.05 of the Charter of the City and by reason of Sections 5.05 and 8.11 of the Charter of the City shall not stand repealed as of the 75th day after adoption.

ADOPTED this 16th day of January, 1995.


Presiding Officer

Attest: 
Clerk of Council