

EMERGENCY ORDINANCE NO. 18-94
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Sally Beels
ON THE 19th DAY OF SEPTEMBER, 1994

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$365,000 BONDS FOR THE PURPOSE OF PAYING THE PROPERTY OWNERS' PORTION, IN ANTICIPATION OF THE COLLECTION OF SPECIAL ASSESSMENTS HERETOFORE LEVIED, OF THE COST OF IMPROVING CLYO ROAD BETWEEN CERTAIN TERMINI BY GRADING, CURBING, PAVING, CONSTRUCTING SIDEWALKS, STORM WATER DRAINAGE SYSTEM, SANITARY SEWER SYSTEM, WATER MAINS AND OTHER NECESSARY FACILITIES AND APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 21-93, passed November 15, 1993, special assessment notes in the amount of \$786,245, dated November 30, 1993 (the Outstanding Notes), were issued for the Clyo Road improvement referred to in Section 1, to mature on October 5, 1994; and

WHEREAS, this Council by proper legislation has previously declared the necessity of the improvement described in Section 1, caused the construction of that improvement to be completed and has levied special assessments therefor; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Bonds authorized by this Ordinance; and

WHEREAS, the Director of Finance, as fiscal officer of the City, has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years and that the maximum maturity of the Bonds described in Section 2 is 20 years; now, therefore,

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. 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 for the retirement of the Outstanding Notes at maturity and thereby maintain and protect the good credit of the City.

SECTION 2. It is necessary to issue bonds of the City in the principal amount of \$365,000 (the Bonds) for the purpose of paying the property owners' portion, in anticipation of the collection of special assessments heretofore levied, of the cost of improving Clyo Road between certain termini by grading, curbing, paving, constructing sidewalks, storm water drainage system, sanitary sewer system, water mains and other necessary facilities and appurtenances. The improvement has been made pursuant to, and the termini of the street to be improved are stated in, Resolution No. 38-92, adopted December 7, 1992. The Bonds shall be issued pursuant to the Charter of the City, Chapter 133, Ohio Revised Code, and this Ordinance.

SECTION 3. The Bonds shall be issued in one lot and only as fully registered bonds, in the denominations of \$5,000 or any integral multiple thereof, except that Bonds maturing in 1995 may be in the denominations of \$1,000 or any integral multiple thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of September 15, 1994.

The Bonds shall bear interest at the estimated rate of 6-1/4% per year (computed on a 360-day per year basis), payable on June 1 and December 1 of each year (the Interest Payment Dates), commencing June 1, 1995, until the principal amount has been paid or provided for. If the Bonds are sold bearing a different rate of interest, the Bonds shall bear the rate of interest, not exceeding an average interest rate of 7-1/2% per year, as specified in the certificate of award providing for the award of the Bonds (the Certificate of Award); provided, that the Bonds of any

one stated maturity all shall bear the same rate of interest, and the difference between the highest and lowest rate stated shall not exceed 400 basis points. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from September 15, 1994.

The Bonds shall mature on December 1 of the years as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1995	\$10,000	2005	\$20,000
1996	10,000	2006	20,000
1997	10,000	2007	20,000
1998	10,000	2008	20,000
1999	15,000	2009	20,000
2000	15,000	2010	25,000
2001	15,000	2011	25,000
2002	15,000	2012	25,000
2003	15,000	2013	30,000
2004	15,000	2014	30,000

The Bonds or a portion of the Bonds may be issued as term bonds stated to mature on December 1, 2014 and on December 1 of an earlier year or years, or only on December 1, 2014, as determined by the Director of Finance in the certificate of award (the Term Bonds), but payable on December 1 in the years (Mandatory Redemption Dates) and yearly principal amounts pursuant to Mandatory Redemption Requirements as hereinafter defined and further described below. The Director of Finance shall determine in the Certificate of Award whether any of the Bonds shall be issued as Term Bonds and the dates thereof and any Mandatory Redemption Dates on which the yearly principal amount shall be payable pursuant to Mandatory Redemption Requirements rather than at stated maturity (the Mandatory Redemption Requirements).

SECTION 4. The Bonds shall be subject to redemption prior to stated maturity as follows:

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(a) Mandatory Redemption. If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory redemption and be redeemed pursuant to Mandatory Redemption Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, on the Mandatory Redemption Dates.

The aggregate of the moneys to be deposited with the Bond Registrar (as defined in Section 5) for payment of principal of and interest on any Term Bonds shall include amounts sufficient to redeem on the Mandatory Redemption Dates the principal amount of Term Bonds payable on those dates pursuant to the Mandatory Redemption Requirements (less the amount of any credit as provided below).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current Mandatory Redemption Requirement (and corresponding mandatory redemption obligation) of the City for any Term Bonds. That option shall be exercised by the City on or before the forty-fifth day preceding the applicable Mandatory Redemption Date, by furnishing the Bond Registrar a certificate, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current Mandatory Redemption Requirement. If the certificate is not timely furnished to the Bond Registrar, the Mandatory Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current Mandatory Redemption Requirement (and corresponding mandatory redemption obligation) also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of the Mandatory Redemption Requirements) or

purchased for cancellation and cancelled by the Bond Registrar, to the extent not applied theretofore as a credit against any redemption obligation.

Each Term Bond so delivered, or previously redeemed, or purchased and cancelled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current Mandatory Redemption Requirement (and corresponding mandatory redemption obligation). Any excess of that amount over the then current Mandatory Redemption Requirement shall be credited against subsequent Mandatory Redemption Requirements (and corresponding mandatory redemption obligations) in the order directed by the Director of Finance.

(b) Optional Redemption. The Bonds shall be subject to optional redemption in accordance with this section unless it is determined by the Director of Finance that it is advantageous to and in the best interest of the City for the Bonds to be issued without optional redemption provisions and that determination shall be set forth in the Certificate of Award. Any Bonds stated to mature on or after December 1, 2005 shall be subject to redemption by and at the option of the City, in whole or in part on any date on or after December 1, 2004, in integral multiples of \$5,000 at the following redemption prices (expressed as percentages of the principal amount redeemed), plus accrued interest to the redemption date:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
December 1, 2004 through November 30, 2005	102%
December 1, 2005 through November 30, 2006	101
December 1, 2006 and thereafter	100

If optional redemption at a price exceeding 100% of the principal amount to be redeemed is to take place as of any applicable Mandatory Redemption Date, the Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the

Bonds to be redeemed on the same date by operation of the Mandatory Redemption Requirements of Section 3(a). The Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Bond Registrar, given upon the direction of the Council by adoption of a resolution or ordinance. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

(c) Partial Redemption. If fewer than all of the outstanding Bonds are called for redemption at one time and Bonds of more than one maturity are then outstanding, the Bonds that are called shall be called in the order of maturities of the Bonds as determined by the Director of Finance. If fewer than all Bonds of a single maturity are to be redeemed, the selection of Bonds of that maturity to be redeemed, or portions thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by the Bond Registrar by lot in any manner that the Bond Registrar may determine. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of principal amount represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of the redemption price of the \$5,000 unit or units called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (ii) for issuance, without charge to the registered owner thereof, of a new Bond or Bonds of any authorized denomination or denominations in an aggregate principal amount equal to the

unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(d) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (i) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register (as defined in Section 7) maintained by the Bond Registrar at the close of business on the fifteenth day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(e) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, funds which, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus interest accrued to the redemption date. If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the

redemption date, is held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All money held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

SECTION 5. The Bonds shall be signed by the Mayor or Deputy Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, 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. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar (as defined in Section 5) as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this Ordinance. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar

and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

SECTION 6. Star Bank, N.A., Cincinnati, Ohio is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar). The Director of Finance shall sign and deliver, in the name and on behalf of the City, the Bond Registrar Agreement between the City and the Bond Registrar (the Agreement) in substantially the form as is now on file with the Clerk of Council. The Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Agreement or amendments to the Agreement. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Agreement from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

SECTION 7. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal shall be payable when due upon presentation and surrender of the Bonds at the main office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register (as defined in Section 7) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date).

SECTION 8. So long as any of the Bonds remain outstanding, the City shall cause the Bond Registrar to maintain and keep at its main office all books and records necessary for the

registration, exchange and transfer of Bonds as provided in this section (the Bond Register). Subject to the provisions of Section 6, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of this Ordinance. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the main office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any

tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this Ordinance, as the Bonds surrendered upon that exchange or transfer.

SECTION 9. The Bonds shall be sold at private sale at not less than par and awarded by the Director of Finance as set forth in the Certificate of Award, in accordance with law and the provisions of this Ordinance. The Director of Finance shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the original purchaser upon payment of the purchase price. The Mayor, the Deputy Mayor, the Director of Finance, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, agreement for the purchase and sale of the Bonds, and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

SECTION 10. The proceeds from the sale of the Bonds, 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 Bonds are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 11. All special assessments collected for the improvements described in Section 1, and any unexpended balance remaining in the Improvement Fund after the cost and expenses of that improvement have been paid, shall be used for the payment of the debt charges

on the Bonds until paid in full and shall be used for no other purpose. In the event and to the extent that those special assessments are not collected, there shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. 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 Bonds when and as the same fall due. In each year to the extent the income from the levy of the special assessments for the improvement is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated.

SECTION 12. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds 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 thereon will not be treated as a preference item 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 Bonds to be and to remain excluded from gross income for federal income tax purposes, and (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 Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (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.

Each covenant made in this section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (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 Bonds 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 Bonds.

The City represents that the Outstanding Notes were designated 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 Bonds and represents that all other conditions are met for treating the Bonds that provide for the current refunding 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.

Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Bonds 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 Bonds 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 Bonds, 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 Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds 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 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, 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 Bonds.

SECTION 13. The Director of Finance is directed to deliver a certified copy of this Ordinance and the Certificate of Award to the County Auditor of Montgomery County.

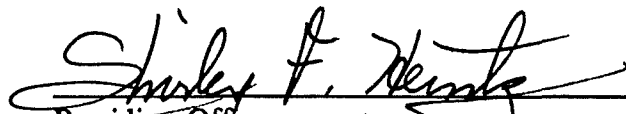
SECTION 14. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuance of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds 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 Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

SECTION 15. That the Clerk of Council is hereby directed to cause a summary of this emergency Ordinance to be published as required by Article V of the Charter of the City.

SECTION 16. 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 17. 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 this Ordinance shall not stand repealed as of the 75th day after adoption.

ADOPTED this 19th day of September, 1994.


Presiding Officer

Attest: 
Clerk of Council