

EMERGENCY ORDINANCE NO. 13-90
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER

Sally Beals ON THE

16TH DAY OF JULY, 1990

ORDINANCE PROVIDING FOR THE ISSUANCE OF \$288,200 OF BONDS BY THE CITY OF CENTERVILLE, OHIO, IN ANTICIPATION OF THE COLLECTION OF SPECIAL ASSESSMENTS HERETOFORE LEVIED, FOR THE PURPOSE OF PAYING AT MATURITY A BOND ANTICIPATION NOTE OF THE CITY ISSUED TO FINANCE COSTS OF IMPROVING WHIPP ROAD IN ACCORDANCE WITH THE PROVISIONS OF RESOLUTION NO. 17-88, AND TO PAY LAWFUL COSTS INCIDENT TO THE ISSUANCE OF THE BONDS, OR NOTES ISSUED IN ANTICIPATION THEREOF, AND DECLARING AN EMERGENCY.

WHEREAS, the fiscal officer of the City has certified that the estimated life or period of usefulness of the improvements hereinafter described as at least five (5) years, and that the estimated maximum maturity of the bonds to be issued to finance the same is twenty (20) years; and

WHEREAS, by proper legislation heretofore adopted this Council declared the necessity of constructing the improvements hereinafter described, determined to proceed with said construction, and, upon completion thereof, levied special assessments upon all the property found to be benefitted by the construction of said improvements in accordance with the special benefits conferred and certification of final costs of said construction; and

WHEREAS, to provide interim financing of a portion of the cost of the improvements, the City heretofore issued a bond

anticipation note in the principal amount of \$307,270 (the "Note"), stated to mature on October 1, 1990, and required to be timely paid; and

WHEREAS, this Council has determined to issue and sell bonds in anticipation of the collection of said special assessments, none of the same having been paid in cash, which bonds shall have the terms hereinafter provided; now, therefore,

THE CITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. That this Council hereby declares that an emergency exists affecting the public welfare, in that the Bonds authorized by this emergency ordinance must be sold without delay so that the special assessments referred to in the preambles hereto may be timely certified to the County Auditor for collection.

SECTION 2. That it is necessary to issue and that bonds of the City of Centerville, Ohio, be issued, in anticipation of the collection of special assessments heretofore levied by Emergency Ordinance No. 10-90, in the principal amount of \$288,200 (the "Bonds"), for the purpose of paying the Note at maturity (together with available cash), the Note having been issued to finance a portion of the cost of relocating and improving Whipp Road in accordance with the provisions of Resolution No. 17-88, and to pay lawful costs incident to the issuance of the Bonds, or notes issued in anticipation thereof.

SECTION 3. That the Bonds shall be issued in one lot, shall be registered as to both principal and interest, shall be

dated August 1, 1990, numbered from R-1 upwards, of denominations exactly equal to the principal amounts subject to mandatory sinking fund redemption, and to the principal amount thereafter payable at final maturity in 2011, as set forth in the schedule below, and shall bear interest at the rate of seven and nine-tenths percent (7.9%) per annum, payable June 1 and December 1 of each year (the "Interest Dates"), commencing June 1, 1991, until the principal amount is paid. The Bonds shall bear interest from the most recent date to which interest has been paid, or if no interest has been paid, shall bear interest from August 1, 1990. The Bonds shall mature on December 1, 2011, but shall be subject to mandatory sinking fund redemption, in numerical order, on December 1 of each of the years 1992 to 2010, as follows:

<u>Year</u>	<u>Principal Amount Subject to Mandatory Sinking Fund Redemption</u>
1992	\$14,200
1993	15,000
1994	14,000
1995	15,000
1996	14,000
1997	15,000
1998	14,000
1999	15,000
2000	14,000
2001	15,000
2002	14,000
2003	15,000
2004	14,000
2005	15,000
2006	14,000
2007	15,000
2008	14,000
2009	14,000
2010	14,000

Such principal payments by way of mandatory sinking fund payments, and principal payable at final maturity in 2011, are hereby determined to be in substantially equal principal installments.

The City covenants to deposit to the credit of the Bond Retirement Fund, and to provide in timely fashion to the Registrar (as defined in SECTION 5 hereof), amounts sufficient in each year from 1992 to 2010 to redeem, at par and accrued interest, the principal amount of Bonds subject to mandatory sinking fund redemption on December 1 in that year as set forth in the foregoing schedule. Notice of each call for mandatory sinking fund redemption of Bonds, identifying by designation, letters, numbers, CUSIP number, if any, or other distinguishing marks the Bonds to be redeemed, the redemption price to be paid, the date fixed for redemption, and the place where the amounts due upon such redemption are payable, shall be given, unless waived in writing by each affected owner of Bonds, by the Registrar by mailing a copy of the redemption notice by registered or certified mail, or by other verifiable means of delivery, with a copy to the City (Attention: Director of Finance), to the registered owner of each Bond to be so redeemed at the owner's address as shown on the Bond Register (as defined in SECTION 7 hereof).

SECTION 4. That the Bonds shall be designated "Whipp Road Special Assessment Bonds, 1990 Series," and shall state upon their faces the purpose for which and the legislation

under which they are issued. The Bonds shall be executed by the Mayor or Deputy-Mayor and by the Director of Finance of the City, provided that any one (but not both) of such officers may execute the Bonds by his or her facsimile signature. 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 a certificate of authentication, as printed on the Bond, is signed by the Registrar as authenticating agent. Authentication by the Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under this ordinance and is entitled to the security and benefit of this ordinance. The certificate of authentication may be signed by any officer or officers or employee or employees of the Registrar or by another person acting as an agent of the Registrar and approved by the Municipal Attorney on behalf of the City. It shall not be necessary that the same person sign the certificate of authentication on all of the Bonds.

SECTION 5. The Fifth Third Bank, Cincinnati, Ohio, is hereby designated to act as the authenticating agent, bond registrar, and paying agent (collectively, the "Registrar") for the Bonds.

SECTION 6. The principal of and interest on the Bonds shall be payable in lawful money of the United States of America without deduction for any registration, transfer, exchange, collection, payment or other service charge.

Principal shall be payable when due upon presentation and surrender of the Bonds at the main office of the Registrar. Interest on each Bond shall be paid on each Interest Date by check or draft mailed to the person in whose name the Bond is registered, at the close of business on the 15th day of the calendar month next preceding that Interest Date (the "Record Date"), on the Bond Register at the address appearing on the Bond Register.

SECTION 7. So long as any of the Bonds remain outstanding, the City will cause to be maintained and kept by the Registrar, at its main office, a register for the purpose of effecting the exchange, transfer and payment of Bonds as provided in this SECTION and in Section 133.41 of the Revised Code (the "Bond Register"). Subject to the provisions of SECTION 6 hereof, the person in whose name any Bond is registered on the Bond Register shall be regarded as the absolute owner thereof for all purposes of this ordinance. Payment of or on account of the principal of and interest on any Bond shall be made only to or on the order of that person. Neither the City nor the Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this SECTION. All payments shall be valid and effectual to satisfy and discharge the liability upon the Bond, including the interest thereon, to the extent of the amount or amounts so paid.

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

If a manual signature or signatures on behalf of the City are required, the Registrar shall undertake the exchange or transfer of Bonds only after signing of the new Bonds by the officer or officers of the City authorized under this ordinance. In all cases in which Bonds are exchanged or transferred, the City shall sign and the 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 the 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 Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer of the Bonds. All Bonds issued upon any exchange or transfer shall be the 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.

Any Bond surrendered to the Registrar pursuant to this ordinance for the purpose of payment or retirement, or for exchange, replacement or transfer, shall be cancelled by the Registrar. The City may at any time deliver to the Registrar for cancellation any Bond previously authenticated and delivered hereunder which the City may have acquired in any lawful manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Registrar. Written reports of the surrender and cancellation of Bonds shall be made to the Director of Finance by the Registrar at least once each calendar year. The cancelled Bonds shall be retained for a reasonable period of time and then returned to the City or destroyed by the Registrar as directed by the Director of Finance, or otherwise as may from time to time be required by the Auditor of State, the Bureau of Inspection and Supervision of Public Offices, or the successor or successors to either.

SECTION 8. That the Bonds are hereby awarded and sold in accordance with Section 133.30(A) of the Revised Code at

private sale, at par and accrued interest, if any, to The Cincinnati Casualty Company, Fairfield, Ohio. Execution on behalf of the City by the City Manager of the commitment of Seasingood & Mayer for placement of the Bonds is hereby approved, ratified and confirmed. The proceeds from the sale of the Bonds, except accrued interest, if any, shall be used for the purpose specified in SECTION 2 hereof and for no other purpose (including, if necessary, payment of the costs specified in Section 133.15(B) of the Revised Code); any accrued interest received from such sale shall be transferred to the Bond Retirement Fund to be applied to the payment of the principal of and interest on the Bonds in the manner provided by law.

SECTION 9. That for the purpose of providing the necessary funds to pay the interest on the Bonds when and as the same falls due, and to provide for the discharge of the principal of the Bonds, there shall be and is hereby levied upon all of the taxable property in the City of Centerville, Ohio, within the ten mill tax limitation, in addition to all other taxes, a direct tax annually during the period the Bonds are to run, outside the limitations imposed by Article XII, Section 2, of the Constitution of Ohio and Section 5705.02 of the Revised Code, in an amount sufficient to provide for the payment of said interest, when and as the same shall fall due, and also to discharge the principal of the Bonds, which tax shall not be less than the interest and sinking fund tax required by Article XII, Section 11, of the Constitution of Ohio. Said tax shall be and is hereby 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 said years are certified, extended and collected. The funds derived from said levies hereby required shall be placed in a separate and distinct fund and, together with interest collected on the same, shall be irrevocably pledged for the payment of the principal of and interest on the Bonds when and as the same fall due; provided, however, that the tax to be levied or collected in any year shall be reduced by the amount to be available for the purpose from lawfully available special assessments.

All special assessments collected for the improvements described in SECTION 2 hereof, and any unexpended balance remaining in the improvement fund which is attributable to the proceeds of sale of the Note and predecessor bond anticipation notes, and interest income on such proceeds, after the cost and expenses of said improvements and lawful costs incident to the issuance of the Bonds and the Note have been paid, shall be used for the payment of the principal of and interest on the Note and the Bonds until paid in full and for no other purpose.

SECTION 10. That it is hereby determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City of Centerville, Ohio, have been done, have happened and have been performed in regular and due form as required by law; that the

full faith, credit and taxing power of the City are hereby irrevocably pledged for the prompt payment of the principal thereof and interest thereon upon call for mandatory sinking fund redemption and at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, will have been exceeded in issuing the Bonds.

SECTION 11. That this Council, for and on behalf of the City, hereby covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute "arbitrage bonds" under Section 148 of the Internal Revenue Code of 1986 (the "Code") and the regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion. The Director of Finance or another officer having responsibility with respect to the issuance of the Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates, circumstances, reasonable expectations and elections of the City pertaining to the use of the proceeds thereof and the provisions of said Section 148 and regulations thereunder.

The City reasonably anticipates that the amount of qualified tax-exempt obligations (other than "private activity bonds" (as defined in Section 141 of the Code) except for "qualified 501(c)(3) bonds" (as defined in Section 145 of the Code)) which will be issued by it and by all of its "subordinate entities" (within the meaning of Section 265 of the Code) during calendar year 1990 will not exceed \$10,000,000. The Bonds are not "private activity bonds" and each Bond is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Code.

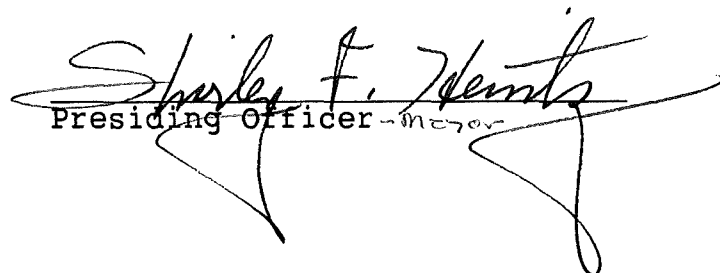
SECTION 12. That this Council hereby finds and determines that all formal actions relative to the adoption of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

SECTION 13. 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 14. That the Director of Finance is hereby directed to file a certified copy of this ordinance with the County Auditor of the County of Montgomery, Ohio.

SECTION 15. That this emergency ordinance shall become effective upon its adoption, in accordance with Section 5.05 of the Charter of the City.

ADOPTED this 16th day of July, 1990.


Presiding Officer

Attest:


Clerk of Council

CERTIFICATE OF CLERK OF COUNCIL

I hereby certify that the forgoing is a true and correct copy of Emergency Ordinance No. 13-90, adopted by the Council of the City of Centerville, Ohio, on July 16, 1990.


Clerk of Council

CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned fiscal officer of the City of Centerville, Ohio, hereby certifies that a certified copy of the foregoing emergency ordinance was filed with the County Auditor of the County of Montgomery, Ohio, on the date appearing in the receipt below.


Director of Finance

RECEIPT OF COUNTY AUDITOR

The undersigned County Auditor of the County of Montgomery, Ohio, hereby acknowledges receipt this 20 day of July, 1990, of a certified copy of Emergency Ordinance No. 13-90 of the City of Centerville, Ohio.

Dana Stamps
County Auditor
County of Montgomery, Ohio

By Paul Scarborough
Deputy County Auditor