

EMERGENCY ORDINANCE NO. 10-87

CITY OF CENTERVILLE, OHIO  
SPONSORED BY COUNCILMAN Charles Taylor  
ON THE 16th DAY OF March, 1987

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF \$207,350 OF BONDS BY THE CITY OF CENTERVILLE, OHIO, IN ANTICIPATION OF THE COLLECTION OF SPECIAL ASSESSMENTS HERETOFORE LEVIED, FOR THE PURPOSE OF DISCHARGING AT MATURITY (TOGETHER WITH CASH PAYMENTS OF SPECIAL ASSESSMENTS AND OTHER LAWFULLY AVAILABLE FUNDS) A BOND ANTICIPATION NOTE OF THE CITY HERETOFORE ISSUED FOR THE PURPOSE OF PAYING PART OF THE COST OF IMPROVING CLYO ROAD IN THE CITY OF CENTERVILLE, AND PAYING OTHER 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 estimated the life of the improvements hereinafter described as at least five (5) years, and has certified the maximum maturity of the bonds to be issued to finance the same as 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 benefited by the construction of said improvements in accordance with the special benefits conferred and the certification of final costs of said construction; and

WHEREAS, to provide interim financing of the cost of the improvements, the City heretofore issued a bond anticipation note in the principal amount of \$735,575 (the "Note"), being stated to mature on May 5, 1987, and required to be paid in a timely manner; and

WHEREAS, this Council has determined to issue and sell bonds in anticipation of the collection of such of said special assessments which have not been paid in cash, the assessees rights to do so having expired, which bonds shall have the terms hereinafter provided, now, therefore,;

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. That an emergency exists affecting the public welfare, in that the bonds hereinafter authorized to be issued and sold must be so issued and sold in order to discharge the Note at maturity.

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, in accordance with Resolution No. 27-85, in the principal amount of \$207,350 (the "Bonds"), for the purpose of discharging the Note at maturity (together with cash payments of special assessments and other lawfully available funds), the Note having been issued for the purpose of paying part of the cost of improving Clyo Road as described in Resolution No. 27-85, and paying other 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 May 1, 1987, numbered from R-1 upwards, of such denominations (not exceeding the principal amount of Bonds maturing in any year) as the successful bidder for the Bonds shall specify and as shall be approved by the Director of Finance of the City, and shall bear interest at the rate of eight and one-half percent (8 1/2%) per annum, payable May 1 and November 1 of each year (the "Interest Dates"), commencing November 1, 1987, until the principal amount is paid. Provided, however, that if the Bonds are sold bearing a different rate of interest from that hereinbefore specified, the Bonds shall bear such rate of interest as may be provided for by resolution of this Council approving acceptance by the Director of Finance of the successful bid therefor. 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 May 1, 1987. The Bonds shall mature in their consecutive serial order on November 1 of each year as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1988	\$10,350	1993	\$10,000	1998	\$10,000	2003	\$10,000
1989	10,000	1994	11,000	1999	11,000	2004	11,000
1990	10,000	1995	10,000	2000	10,000	2005	10,000
1991	11,000	1996	11,000	2001	11,000	2006	10,000
1992	10,000	1997	10,000	2002	10,000	2007	11,000

Such maturities are hereby determined to be in substantially equal annual installments.

SECTION 4. That the Bonds shall be designated "Clyo Road Improvement Special Assessment Bonds", shall express upon their faces the purpose for which they are issued and that they are issued in pursuance of this ordinance and the Uniform Bond Law of the Ohio Revised Code. The Bonds shall be executed by the Mayor or Deputy Mayor and the Director of Finance of the City, provided that any one of such officers may execute the Bonds by his or her facsimile signature, and shall bear the corporate seal of the City, or a facsimile thereof. 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 Bond Registrar (as defined in SECTION 5 hereof) 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 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 Bond Registrar or by such other person acting as an agent of the Bond Registrar and approved by the Director of Finance 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 Director of Finance is authorized and directed to select a bank or trust company to act as the

authenticating agent, bond registrar, transfer agent and paying agent (collectively, the "Bond Registrar") for the Bonds. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to an agreement between the City and the Bond Registrar from the proceeds of the Bonds. The name of the Bond Registrar shall be indicated in the bond sale notice for the Bonds or said notice shall indicate that the name of the Bond Registrar will be available from the City before the date of sale of the Bonds. This Council shall approve said selection and said agreement in the resolution confirming award of 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 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 each Bond shall be paid on each Interest Payment 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 Payment Date (the "Record Date"), on the Bond Register (as defined in SECTION 7 hereof) 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 Bond Registrar 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 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 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 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 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, 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 Bond 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 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 or Bonds 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 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 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 the 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 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 Bond Registrar pursuant to this ordinance for the purpose of payment or retirement, or for exchange, replacement or transfer, shall be cancelled by the

Bond Registrar. The City may at any time deliver to the Bond Registrar for cancellation any Bond previously authenticated and delivered hereunder which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Bond Registrar. Written reports of the surrender and cancellation of Bonds shall be made to the Director of Finance by the Bond Registrar at least twice each calendar year. The cancelled Bonds shall be returned to the City in accordance with the agreement with the Bond Registrar.

SECTION 8. That the Bonds shall be first offered at par and accrued interest to the Bond Retirement Fund of the City, and so many of the same as shall not be taken by said Bond Retirement Fund shall be advertised for sale and sold in the manner provided by law, but not for less than their par value and accrued interest. The advertisement of sale of the Bonds shall state that anyone desiring to do so may present a bid or bids for the Bonds based upon their bearing a different rate of interest from that fixed in SECTION 3 hereof; provided, however, that where a fractional interest rate is bid, such fraction shall be one-eighth of one per cent or a multiple thereof; and the amount of the good faith security to accompany each bid shall be \$2,073.50, representing one percent of the aggregate principal amount of the Bonds. The rate of interest per annum specified in SECTION 3 hereof is the maximum interest rate per annum within the meaning of Section 9.95 of the Ohio Revised Code, unless a different maximum interest rate per



annum shall be specified in a resolution of this Council approving acceptance by the Director of Finance of the successful bid for the Bonds. The proceeds from the sale of the Bonds, except the premium and accrued interest, if any, shall be used for the purpose specified in SECTION 2 hereof and for no other purpose; and any premium and 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 as they mature serially, there shall be and is hereby levied upon all of the taxable property in the City of Centerville, Ohio, in addition to all other taxes, a direct tax annually during the period the Bonds are to run, within the limitations imposed by Article XII, Section 2, of the Constitution of Ohio and Section 5705.02 of the Ohio 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 as they serially mature, 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 in each year to the extent that the special assessments anticipated by the Bonds are available for payment of the Bonds and interest thereon and are appropriated for such purpose, the amount of said tax shall be reduced by the amount of the assessments so available and appropriated.

The tax levies hereinabove described do not represent any new tax upon the taxable property in the City of Centerville.

All special assessments hereafter collected for the improvements described in SECTION 2 hereof, and any unexpended balance remaining in the improvement fund after the Note has been discharged at maturity and the cost and expenses of said improvements have been paid, shall be used for the payment of the principal of and interest on the Bonds until paid in full and for no other purpose.

SECTION 10. 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 revenues of the City are hereby irrevocably pledged for the prompt payment of the principal and interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Bonds.

SECTION 11. That this Council, for and on behalf of the City of Centerville, Ohio, 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 (herein 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, containing appropriate covenants on

behalf of the City and setting forth the facts, estimates and circumstances and reasonable expectations 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 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 1987 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 the Clerk of this Council hereby is directed to cause a summary of this ordinance to be published as required by Article V of the Charter of the City.

SECTION 13. That this Council hereby finds and determines that all formal actions of 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 of its committees that resulted in such formal action, were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 14. That the Director of Finance hereby is directed to file a certified copy of this emergency 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.

ADOPTED this 16th day of March, 1987.

Shirley F. Hents  
Presiding Officer

Attest:

Marilyn J. McLaughlin  
Clerk of Council

CERTIFICATE OF CLERK

I hereby certify that the foregoing is a true and correct copy of Emergency Ordinance No. 10-87, adopted by the Council of the City of Centerville, Ohio, on March 16, 1987.

Marilyn J. McLaughlin  
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 March 17, 1987.

W. W. Wacker  
Director of Finance

RECEIPT OF COUNTY AUDITOR

The undersigned County Auditor of the County of Montgomery, Ohio, hereby acknowledges receipt this 19 day of MARCH, 1987, of a certified copy of the foregoing emergency ordinance of the City of Centerville, Ohio.

Dana A. Stamps  
County Auditor  
County of Montgomery, Ohio

By Michael Hum  
Deputy County Auditor