

CITY OF VANDALIA

MONTGOMERY COUNTY, OHIO

ORDINANCE NO. 13-09

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$2,381,600, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF ACQUIRING APPROXIMATELY 201 ACRES OF REAL PROPERTY BOUNDED GENERALLY BY U.S. ROUTE 40, PETERS PIKE, STONE QUARRY ROAD AND DOG LEG ROAD IN SUPPORT OF ECONOMIC DEVELOPMENT AND JOB CREATION WITHIN THE CITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Vandalia, Ohio (the "City") is authorized by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165, Ohio Revised Code (the "Act"), among other things, to issue bonds to acquire, construct, equip, or improve a "project" as defined in Section 165.01, Ohio Revised Code, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State of Ohio; and

WHEREAS, to create and preserve jobs and employment opportunities, the City has determined to acquire approximately 201 acres of real property bounded generally by U.S. Route 40, Peters Pike, Stone Quarry Road and Dog Leg Road for disposition to private companies for development as commercial and industrial projects; and

WHEREAS, pursuant to Ordinance No. 12-08, passed June 11, 2012, notes in anticipation of bonds in the amount of \$3,480,000, dated August 16, 2012 (the "Outstanding Notes"), were issued for the purpose stated in Section 1 and will mature on August 15, 2013; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF VANDALIA, COUNTY OF MONTGOMERY, OHIO, THAT:

Section 1. It is necessary to issue bonds of this City in the maximum principal amount of \$2,381,600 (the "Bonds") for the purpose of acquiring approximately 201 acres of real property bounded generally by U.S. Route 40, Peters Pike, Stone Quarry Road and Dog Leg Road in support of economic development and job creation within the City (the "Project").

Section 2. The Bonds shall be dated approximately July 1, 2014, shall bear interest at the now estimated rate of 6.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty (20) annual principal installments on December 1 of each year and in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable shall be substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2014.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$2,381,600 (the "Notes") shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 1 and to retire, together with other funds available to the City, the Outstanding Notes and to pay any financing costs. The principal amount of Notes to be issued (not to exceed the stated maximum amount) shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (the "Certificate of Award") as the amount which, along with other available funds of the City, is necessary to retire the Outstanding Notes and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature one year following the date of issuance,

provided that the Director of Finance shall establish the maturity date in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 7.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award in accordance with Section 6 of this Ordinance. The Notes shall be issued pursuant to Section 13 of Article VIII of the Constitution of the State and to the laws of the State, particularly Chapter 165, Ohio Revised Code, the Charter of the City, this Ordinance and the Certificate of Award.

Section 4. 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 as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that 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 or at the office of the Director of Finance if agreed to by the Director of Finance and the original purchaser (the "*Paying Agent*").

Section 5. The Notes shall be signed by the City Manager 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 minimum denominations of \$100,000 (and may be issued in denominations in excess thereof provided that any such amount is a whole multiple of \$1,000) and with numbers as requested by the original purchaser and approved by the Director of Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. 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. As used in this Section and this Ordinance:

"*Book entry form*" or "*book entry system*" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "*immobilized*" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"*Depository*" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"*Participant*" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

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

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

Section 6. The Notes shall be sold at not less than par plus accrued interest (if any) at private sale by the Director of Finance to Fifth Third Securities, Inc. in accordance with law and the provisions of this Ordinance. The Director of Finance shall sign the Certificate of Award (which may be dated prior to the effective date of this Ordinance) referred to in Section 3 fixing the interest rate or rates which the Notes shall bear and evidencing that sale to the original purchaser, 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 City Manager, the Director of Finance, the City Attorney, the Clerk of Council and other City officials, 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, and any actions heretofore taken to consummate those transactions are hereby approved and ratified.

Further, in the event of a temporary absence of the Director of Finance, the City Manager may so designate such other person as Acting Director of Finance, and such Acting Director of Finance is hereby authorized and directed to perform all responsibilities of the Director of Finance hereunder, including the signature of 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.

Section 7. The proceeds from the sale of the Notes received by the City (or withheld by the original purchaser on behalf of the City) 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. The Certificate of Award may authorize the original purchaser to withhold certain proceeds from the sale of the Notes to provide for the payment of certain financing costs on behalf of the City. Any portion of those proceeds received by the City (after payment of those financing costs) representing premium or accrued interest shall be paid into the Bond Fund (as defined below).

Section 8. 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 9. This Council hereby determines that the Project is a "project" as defined in the Act and is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution; that the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; and that the amount necessary to finance the Project will require the issuance, sale and delivery of the Notes, which Notes shall be payable and secured as provided herein.

Section 10. The Notes are special obligations of the City, the principal of and interest on which are payable solely from the proceeds of the Bonds and by a pledge of and lien on the Nontax Revenues

established by and as provided in this Ordinance which are on deposit in the Bond Fund, all as described below.

There was heretofore created by the City a separate fund named the Economic Development Bond Retirement Fund (the "*Bond Fund*") into which Nontax Revenues shall be deposited in accordance with the following provisions.

The City hereby covenants and agrees that on or before any date on which principal or interest is payable on the Notes it shall deposit into the Bond Fund from Nontax Revenues selected by the City, an amount equal to the amount of principal and/or interest due on the Notes on that date, less, in the discretion of the City, any interest earnings or other moneys accumulated in the Bond Fund which have not theretofore been used as a credit against a prior payment obligation. Moneys in the Bond Fund shall be used solely and exclusively to pay principal and interest on the Notes and the Bonds when due.

The City hereby covenants and agrees that so long as the Notes are outstanding, it will appropriate and maintain sufficient Nontax Revenues each year to make each payment due under this Section and to pay principal and interest when due; *provided, however*, the amount of such appropriation may be reduced by the amount of any Bonds or renewal notes issued for the purpose of refunding the Notes and payments due hereunder and under the Notes are payable solely from the proceeds of the Bonds and Nontax Revenues, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12 of the Ohio Revised Code as moneys that are not raised by taxation. The Notes are not secured by an obligation or pledge of any moneys raised by taxation. The Notes do not and shall not represent or constitute a debt or pledge of the faith or credit or taxing power of the City, and the registered owners of the Notes have no right to have taxes levied by the City for the payment of principal of and interest on the Notes.

Nothing herein shall be construed as requiring the City to use or apply to the payment of principal of and interest on the Notes any funds or revenues from any source other than proceeds of the Bonds and Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Notes.

For purpose of this Ordinance, "*Nontax Revenues*" shall mean all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, including, but not limited to the following: (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures which are deposited in the City's General Fund; (d) fees deposited in the City's General Fund from properly imposed licenses and permits; (e) investment earnings on the City's General Fund and which are credited to the City's General Fund; (f) investment earnings of other funds of the City that are credited to the City's General Fund; (g) proceeds from the sale of assets which are deposited in the City's General Fund; (h) rental income which is deposited in the City's General Fund; (i) gifts and donations; and (j) proceeds from the sale of any portion of the Project.

Section 11. The Director of Finance is authorized and directed to provide the notification required by Section 165.03(D) of the Ohio Revised Code to the Director of the Ohio Development Services Agency.

Section 12. The Director of Finance is authorized to request a rating for the Notes from Moody's Investors Service, Inc. or Standard & Poor's Ratings Service, or both, as the Director of Finance determines is in the best interest of the City. The expenditure of the amounts necessary to secure any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

Section 13. The legal services of the law firm of Squire Sanders (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and

the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

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 issuing of the Notes in order to make them legal, valid and binding special 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; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 15. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and any of its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

Section 16. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to permit the City to issue revenue notes under Chapter 165 of the Ohio Revised Code in order to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the City and the State of Ohio and to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage provided it receives the affirmative vote of five Council members; otherwise, it shall take effect and be in force at the earliest period allowed by law.

Passed this 15 day of July, 2013.

APPROVED:

Arlene J. Setzer, Mayor

ATTEST:

Robert L. Anderson
Clerk of Council