

CITY OF VANDALIA
MONTGOMERY COUNTY, OHIO
ORDINANCE NO. 11-10

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES
IN THE MAXIMUM PRINCIPAL AMOUNT OF \$4,580,000, 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, STONEQUARRY 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, Stonequarry Road and Dog Leg Road for disposition to private companies for development as commercial and industrial projects; and

WHEREAS, pursuant to Ordinance No. 10-04, passed June 14, 2010, notes in anticipation of bonds in the amount of \$4,580,000, dated August 18, 2010 (the "*Outstanding Notes*"), were issued for the purpose stated in Section 1 and will mature on August 18, 2011; 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;

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 \$4,580,000 (the "*Bonds*") for the purpose of acquiring approximately 201 acres of real property bounded generally by U.S. Route 40, Peters Pike, Stonequarry 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 August 1, 2012, 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, 2012.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$4,580,000 (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

after the date of issuance, *provided* that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to fifteen (15) days less than one year after the date of issuance by setting forth that 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 or prior redemption 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.

The Notes shall be subject to optional redemption by and at the sole option of the City, in whole or in part in integral multiples of \$100,000 or any integral multiple of \$1,000 in excess thereof, on any date prior to maturity and at the redemption price of 100% (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date. Notes to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Paying Agent (as defined below), given upon the direction of this Council by adoption of a resolution or passage of an ordinance. That notice shall specify the redemption date and the principal amount of Notes 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 Paying Agent.

If fewer than all of the Notes are to be redeemed, the selection of Notes to be redeemed, or portions thereof in amounts of \$100,000 or any integral multiple of \$1,000 in excess thereof, shall be made by the Paying Agent by lot in a manner determined by the Paying Agent. In the case of a partial redemption of Notes by lot when Notes of denominations greater than \$100,000 are then outstanding, each \$100,000 unit of principal thereof (together with any integral multiple of \$1,000 in excess thereof) shall be treated as if it were a separate Note of the denomination of \$100,000 (together with any integral multiple of \$1,000 in excess thereof). If it is determined that one or more, but not all, of the \$100,000 units of principal amount (together with any integral multiple of \$1,000 in excess thereof) represented by a Note are to be called for redemption, then, upon notice of redemption of a \$100,000 unit or units (together with any integral multiple of \$1,000 in excess thereof), the registered owner of that Note shall surrender the Note to the Paying Agent (A) for payment of the redemption price of the \$100,000 unit or units of principal amount (together with any integral multiple of \$1,000 in excess thereof) called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (B) for issuance, without charge to the registered owner, of a new Note or Notes 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 Note surrendered.

The notice of the call for redemption of Notes shall identify (A) by designation, letters, numbers or other distinguishing marks, the Notes or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Paying Agent 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 Notes subject to redemption in whole or in part at the registered owner's address shown on the Note Register maintained by the Paying Agent at the close of business on the 15th day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Note, however, shall not affect the validity of the proceedings for the redemption of any Note.

In the event that notice of redemption shall have been given by the Paying Agent to the registered owners as provided above, there shall be deposited with the Paying Agent on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Paying Agent, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Notes for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Notes and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to the provisions of Sections 3 and 5,

upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus accrued interest to the redemption date. If moneys for the redemption of all of the Notes and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Paying Agent 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 Notes and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Notes 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 moneys held by the Paying Agent for the redemption of particular Notes 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 Notes, *provided* that any interest earned on the moneys so held by the Paying Agent shall be for the account of and paid to the City to the extent not required for the payment of the Notes called for redemption.

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.

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 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 or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the "*Code*") or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes will not be 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 Director of Finance 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, including, without limitation thereto, any of the elections available under Section 148 of the Code, 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 with respect to the Notes, 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 with respect to the Notes, 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. The Director of Finance or any other officer of the City having responsibility for issuance of the Notes is specifically authorized to designate the Notes as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants.

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 the 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. 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 Department of Development.

Section 13. 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 14. The legal services of the law firm of Squire, Sanders & Dempsey (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 15. 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 16. 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 17. 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 15th day of August, 2011.

APPROVED:

William M. Loy, Mayor

ATTEST:

Robert L. Anderson
Clerk of Council