

TEMPORARY ORDINANCE NO. 13-10

PERMANENT ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION ONE HUNDRED THOUSAND DOLLARS (\$3,100,000.00), TO PAY COSTS OF IMPROVING ETY ROAD, MEMORIAL DRIVE AND MICHAELS WAY BY GRADING, WIDENING, PAVING, CURBING, IMPROVING BRIDGES AND RAILROAD CROSSINGS, RELOCATING UTILITIES, AND INSTALLING SIDEWALKS, TRAFFIC SIGNALS AND SIGNS, AND WATER, SANITARY AND STORM WATER LINES AND FACILITIES, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO; APPROVING A PRELIMINARY OFFICIAL STATEMENT; AUTHORIZING THE PREPARATION, USE AND EXECUTION OF AN OFFICIAL STATEMENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND REGISTRAR AGREEMENT, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE CERTIFICATE; AUTHORIZING CERTAIN OTHER ACTIONS RELATED TO THE ISSUANCE OF THE BONDS; DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 18-09, passed September 28, 2009, a note in anticipation of bonds in the amount of \$3,475,000 dated October 15, 2009 (the "Outstanding Note"), was issued for the purpose stated in Section 1, to mature on October 14, 2010; and

WHEREAS, this Council finds and determines that the City should issue the Bonds (as defined in Section 1) to retire the Outstanding Note; and

WHEREAS, the Auditor as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the Improvement to be financed by the Bonds is at least five years and the estimated maximum maturity of the Bonds is 20 years;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lancaster, County of Fairfield, Ohio, that:

SECTION 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

"Annual Information" means annual financial information and operating data of the type to be specified in the Continuing Disclosure Agreement in accordance with the Rule.

"Auditor" means the City Auditor.

"Authorized Denominations" means the denomination of \$5,000 or any integral multiple thereof.

"Bond proceedings" means, collectively, this Ordinance, the Bond Registrar Agreement, the Bond Purchase Agreement, the Final Terms Certificate, the Continuing Disclosure Agreement and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

"Bond Purchase Agreement" means the Bond Purchase Agreement between the City and the Original Purchaser now on file with the Clerk of this Council.

"Bond Register" means all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Ordinance and the Bond Registrar Agreement.

"Bond Registrar" means the bank or trust company appointed by the Auditor in the Final Terms Certificate to act as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Bond Registrar Agreement and until a successor Bond Registrar shall have become such pursuant to the provisions of the Bond Registrar Agreement and, thereafter, "Bond Registrar" shall mean the successor Bond Registrar.

"Bond Registrar Agreement" means the Bond Registrar Agreement between the City and the Bond Registrar now on file with the Clerk of this Council.

"Bonds" means the bonds authorized in Section 2.

"Book entry form" or "book entry system" means a form or system under which (a) the ownership of book entry interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Bonds "immobilized" in the custody of the Depository or its designated agent. The book entry maintained by others than the City is the record that identifies the owners of book entry interests in those Bonds and that principal and interest.

"City" means the City of Lancaster, Ohio.

"Closing Date" means the date of physical delivery of, and payment of the purchase price for, the Bonds.

"Code" means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

"Continuing Disclosure Agreement" means, collectively, the Continuing Disclosure Certificate and the agreements of the City set forth in Section 9(c) of this Ordinance.

"Continuing Disclosure Certificate" means the Continuing Disclosure Certificate authorized by this Ordinance.

"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 book entry interests in Bonds or the principal of and interest on Bonds, and to effect transfers of Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Final Terms Certificate" means the Final Terms Certificate authorized by this Ordinance.

“Improvement” means improving Ety Road, Memorial Drive and Michaels Way by grading, widening, paving, curbing, improving bridges and railroad crossings, relocating utilities, and installing sidewalks, traffic signals and signs, and water, sanitary and storm water lines and facilities, together with all necessary appurtenances thereto.

“Interest Payment Dates” means June 1 and December 1 of each year that the Bonds are outstanding, commencing December 1, 2010.

“Mandatory Sinking Fund Redemption” means the schedule of the mandatory redemption of Term Bonds set forth in the Final Terms Certificate.

“Mandatory Sinking Fund Redemption Dates” means those Principal Payment Dates set forth in the Final Terms Certificate on which a portion of the principal amount of the Term Bonds are required to be redeemed.

“MSRB” means the Municipal Securities Rulemaking Board established by the SEC.

“Original Purchaser” means Fifth Third Securities, Inc.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies, and clearing corporations.

“Preliminary Official Statement” means the preliminary official statement of the City relating to the issuance of the Bonds substantially in the form now on file with the Clerk of this Council.

“Principal Payment Dates” means December 1 in each of the years from and including 2010 to and including 2026; provided, however, that the first Principal Payment Date may be deferred one year and the last Principal Payment Date may be advanced up to five years if such actions are determined by the Auditor in the Final Terms Certificate to be in the best interest of and financially advantageous to the City and further provided that in no case shall the last Principal Payment Date exceed the maximum maturity of the Bonds.

“Rule” means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

“SEC” means the Securities and Exchange Commission.

“Serial Bonds” means those Bonds designated as such and maturing on the dates set forth in the Final Terms Certificate.

“Specified Events” means the occurrence of any of the following events, within the meaning of the Rule, with respect to the Bonds, as applicable: principal and interest payment delinquencies; non-payment related defaults; unscheduled draws on debt service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers, or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the Bonds; modifications to rights of holders or beneficial owners of the Bonds; Bond calls; defeasances; release, substitution, or sale of property securing repayment of the Bonds; and rating changes. The repayment of the Bonds

is not secured by a lien on any property capable of release or sale or for which other property may be substituted.

“Term Bonds” means those Bonds designated as such and maturing on the Principal Payment Dates set forth in the Final Terms Certificate.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 2. Authorized Principal Amount and Purpose; Application of Proceeds. It is necessary and determined to be in the City’s best interest to issue bonds of this City in an aggregate principal amount not to exceed \$3,100,000 (the “Bonds”) to retire the Outstanding Note and to pay costs of issuing the Bonds. The aggregate principal amount of Bonds to be issued (not to exceed \$3,100,000) shall be determined by the Auditor in the Final Terms Certificate to be the aggregate principal amount of Bonds that is required to be issued at this time for the purpose stated in this Section 2.

The proceeds from the sale of the Bonds shall be used to retire the Outstanding Note and to pay costs of the issuance of the Bonds. Any proceeds of the Bonds not spent 120 days after the issuance of the Bonds shall be transferred to the Bond Retirement Fund and used to pay principal of or interest on the Bonds when due. All interest earned on amounts on deposit in each of those funds derived from the proceeds of the Bonds (including interest earned on such interest) shall be credited to the fund and used for the purposes set forth above, and shall not be transferred to the General Fund. All of the proceeds of the Bonds and interest earned on those proceeds are hereby appropriated for the purposes set forth above.

SECTION 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Bonds shall be issued in one lot and only as fully registered bonds, in the Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated the Closing Date.

(a) *Interest Rates.* The Bonds shall bear the rate or rates of interest per year (computed on a 360-day per year basis consisting of twelve 30-day months), as shall be determined by the Auditor in the Final Terms Certificate. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. 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 their date.

(b) *Principal Payment Schedule.* The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Auditor, subject to subsection (c) of this Section, in the Final Terms Certificate.

Consistent with the foregoing and in accordance with the determination of the best interest of and financial advantages to the City, the Auditor shall specify in the Final Terms Certificate (i) the aggregate principal amount of Bonds to be issued as Serial Bonds, the Principal Payment Dates on which those Serial Bonds shall mature and the principal amount thereof to mature on each such Principal Payment Date, and (ii) the aggregate principal amount of Bonds, if any, to be issued as Term Bonds, the principal amount thereof that shall be stated to mature on each such Principal Payment Date, and the Mandatory Sinking Fund Redemption Date and the Mandatory Sinking Fund Redemption Requirements applicable to those Term Bonds.

(c) *Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts.* The rate or rates of interest per year to be borne by the Bonds, and the principal amount of Bonds maturing, shall be such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three times the amount of those payments in any other fiscal year. The net interest rate per year for the Bonds, determined by taking into account the respective principal amounts of the Bonds and terms to maturity or mandatory sinking fund redemption of those principal amounts of Bonds, shall not exceed 6% per year.

(d) *Payment of Debt Charges.* 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 of and any premium on the Bonds, shall be payable when due upon presentation and surrender of the Bonds at the principal corporate trust 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 at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date. Notwithstanding the foregoing, if and so long as the Bonds are issued in a book entry system, principal of and interest and any premium on the Bonds shall be payable in the manner provided in any agreement entered into by the Auditor, in the name and on behalf of the City, in connection with the book entry system.

(e) *Redemption Provisions.* The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) *Mandatory Sinking Fund Redemption.* If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to and redeemed pursuant to the Mandatory Sinking Fund Redemption Requirements on the Mandatory Sinking Fund Redemption Dates applicable to the Term Bonds set forth in the Final Terms Certificate at a price equal to 100% of the principal amount of the Term Bonds to be redeemed plus accrued interest to the applicable Mandatory Sinking Fund Redemption Date.

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 or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) of the City for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so delivered. That option shall be exercised by the City on or before the 15th day preceding any Mandatory Redemption Date with respect to which the City wishes to obtain a credit, by furnishing the Bond Registrar a certificate, signed by the Auditor, setting forth the extent of the credit to be applied with respect to the then current or any subsequent Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date. If the certificate is not timely furnished to the Bond Registrar, the current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current or any subsequent Mandatory Sinking Fund 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 applicable Mandatory Sinking Fund Redemption Requirements) or purchased for cancellation and canceled by the Bond Registrar, to the extent not applied theretofore as a credit against any Mandatory Sinking Fund Redemption Requirement,

for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so redeemed or purchased and canceled.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current or subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations) for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so delivered, redeemed or purchased and canceled.

(ii) Optional Redemption. Certain maturities of Bonds may be subject to optional redemption by and at the sole option of the City, in whole or in integral multiples of \$5,000 on the dates, in the years and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, all to be determined by the Auditor in the Final Terms Certificate provided that the earliest optional redemption date shall not be earlier than December 1, 2019 or later than December 1, 2022, and the redemption price shall not be greater than 103%.

If optional redemption of Term Bonds at a redemption price exceeding 100% of the principal amount to be redeemed is to take place as of any Mandatory Redemption Date applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Term Bonds of the same maturity to be redeemed by operation of the Mandatory Sinking Fund Redemption Requirements. The Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Auditor to the Bond Registrar, given upon the direction of this Board by adoption of an 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.

There shall be deposited with the Bond Registrar on or prior to the redemption date, moneys that, in addition to any other money available therefore and held by the Bond Registrar, will be sufficient to redeem the Bonds for which notice of redemption has been given.

(iii) Partial Redemption. If fewer than all of the Bonds are called for optional redemption at one time, they shall be called as selected by, and in a manner determined by the City. If fewer than all Bonds of a single maturity are to be redeemed, the selection of the Bonds to be redeemed, or portions thereof in Authorized Denominations shall be made by the Bond Registrar by lot in a manner determined by the Bond Registrar. In the case of partial redemption of Bonds by lot when Bonds in denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal shall be treated as if 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 a 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 accrued interest to the redemption date), and (ii) issuance, without charge to the registered owner, of a new Bond or Bonds of any Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed portion, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(iv) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (A) by designation, letters, numbers or other distinguishing marks, the Bonds 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 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 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.

(v) *Payment of Redeemed Bonds.* 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 therefore 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 4. Execution and Authentication of Bonds; Appointment of Bond Registrar.** The Bonds shall be signed by the Mayor and the Auditor, 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 Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Auditor, shall be numbered as determined by the Auditor in order to distinguish each Bond from any other Bond 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.

The Auditor shall appoint a bank or trust company located in the State of Ohio to act as the initial Bond Registrar after determining that the appointed bank or trust company will not endanger the funds or securities of the City and that proper safeguards are available for that purpose and that appointment shall be confirmed in the Final Terms Certificate. The Bond Registrar Agreement is approved, and the Auditor is authorized to sign and deliver, in the name and on behalf of the City, the Bond Registrar Agreement with any changes that are not inconsistent with this Ordinance, are not materially adverse to the City and are approved by the Auditor. That such changes are not materially adverse to the City and have been approved by the Auditor shall be conclusively evidenced by the Auditor's signing of the Bond Registrar Agreement. The Auditor shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Bond Registrar Agreement, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Bond Purchase 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.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar 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, the Bond proceedings. 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 Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

SECTION 5. Registration; Transfer and Exchange; Book Entry System.

(a) *Bond Registrar.* So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its principal corporate trust office. Subject to the provisions of Section 5(c), 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 the Bond proceedings. 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.

(b) *Transfer and Exchange.* Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the principal corporate trust 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 principal corporate trust 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 the Bond proceedings. 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 the Bond proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15th day preceding the mailing of notice of Bonds to be redeemed and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part.

(c) *Book Entry System.* The Bonds 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 Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) the book entry

interest owners in book entry form shall have no right to receive Bonds 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 Bonds 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 Bonds for use in a book entry system, the Auditor may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Auditor does not or is unable to do so, the Auditor, and after the Bond Registrar has made provision for notification of the book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and the City and the Bond Registrar authenticate and deliver bond certificates in registered form 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 Auditor 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 Bonds, after determining that the signing thereof will not endanger the funds or securities of the City.

**SECTION 6. Sale of the Bonds to the Original Purchaser.** The Bonds are to be sold at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Auditor in the Final Terms Certificate, and shall be awarded by the Auditor with and upon such other terms as are required or authorized by this Ordinance to be specified in the Final Terms Certificate, in accordance with law, the provisions of this Ordinance and the Bond Purchase Agreement. The Auditor is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Revised Code.

The Auditor shall sign and deliver the Final Terms Certificate and 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 Auditor, the Director of Law, the Clerk of Council and other City officials, as appropriate, each are 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.

The Bond Purchase Agreement is approved, and the Auditor is authorized to sign and deliver, in the name and on behalf of the City, the Bond Purchase Agreement, with any changes that are not inconsistent with this Ordinance, are not materially adverse to the City and are approved by the Auditor. That such changes are not materially adverse to the City and have been approved by the Auditor shall be conclusively evidenced by the Auditor's signing of the Bond Purchase Agreement.

**SECTION 7. Provisions for Tax Levy.** 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.

SECTION 8. Federal Tax Considerations. 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 Section 141, 148 or 149 of 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 an item of tax preference under Section 57 of the Code.

The City hereby represents that the Outstanding Note was treated as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Outstanding Note from the proceeds of, and within 90 days after the issuance of, the Bonds, and represents that all other conditions are met for treating the Bonds as "qualified tax-exempt obligations" and not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code.

Further, the City represents and covenants, during any time or in any manner as might affect the status of the Bonds as "qualified tax-exempt obligations", that it has not formed or participated in the formation of, or benefited 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 covenants that it 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 composition issue that combines issues or lots of tax-exempt obligations of different issuers.

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, (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 purposes 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 the proceeds of the Bonds 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 Auditor, 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.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the principal of and interest 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.

#### SECTION 9. Official Statement and Continuing Disclosure.

(a) *Primary Offering Disclosure -- Official Statement.* The Preliminary Official Statement of the City relating to the original issuance of the Bonds substantially in the form now on file with the Auditor is approved. The distribution and use of the Preliminary Official Statement is hereby approved. The Mayor and the Auditor are each authorized and directed to complete the Preliminary Official Statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent, that the revised Preliminary Official Statement is a "deemed final" official statement (except for permitted omissions) by the City as of its date for purposes of the Rule.

Those officers are each further authorized and directed to complete and sign on behalf of the City, and in their official capacities, a final official statement for purposes of the Rule, and are further authorized to use and distribute, or authorize the use and distribution of, that final official statement and supplements thereto in connection with the original issuance of the Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the City, and in their official capacities, such certificates in connection with the accuracy of the Preliminary Official Statement and the final official statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

(b) *Application for Rating or Bond Insurance.* If, in the judgment of the Auditor, the filing of an application for (i) a rating on the Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Bonds, is in the best interest of and financially advantageous to this City, the Auditor is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating or policy, except to the extent otherwise paid in accordance with the Purchase Agreement, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. To the extent the Auditor has taken such actions, those actions are hereby ratified and confirmed.

(c) *Agreement to Provide Continuing Disclosure.* For the benefit of the holders and beneficial owners from time to time of the Bonds, the City agrees, as the only obligated person with respect to the Bonds under the Rule, to provide or cause to be provided such financial information and operating data, audited financial statements and notices, in such manner, as may be required for purposes of paragraph (b)(5)(i) of the Rule. The City further agrees, in particular, to provide or cause to be provided:

- (i) to the MSRB, (A) Annual Information for each City fiscal year ending hereafter, not later than the 270<sup>th</sup> day following the end of the fiscal year, and (B) when and if available, audited City financial statements for each such fiscal year; and
- (ii) to the MSRB, in a timely manner, notice of (A) any Specified Event if that Event is material, (B) the City's failure to provide the Annual Information within the time specified above, and (C) any change in the accounting principles applied in the preparation of its annual financial statements, any change in its fiscal year, its failure to appropriate funds to meet costs to be incurred to perform the agreement, and of the termination of the agreement.

The Continuing Disclosure Certificate now on file with the Clerk of this Board is approved. The Auditor is authorized and directed to complete, sign and deliver, in the name and on behalf of the City, the Continuing Disclosure Certificate with such changes that are not inconsistent with this Ordinance, are not materially adverse to the City, and are approved by the Auditor, to specify in reasonable detail the Annual Information to be provided (which may be provided by specific reference to other documents previously filed and available in accordance with the Rule), whether the City has obtained any credit enhancement or provider for the Bonds and the City's expectations as to whether audited financial statements will be prepared, the accounting principles to be applied in their preparation, and whether they will be available together with, or separately from, Annual Information. That any such changes to the Continuing Disclosure Certificate are not materially adverse to the City and are approved by the Auditor shall be evidenced conclusively by the signing of the Continuing Disclosure Certificate by the Auditor.

The Auditor is further authorized and directed to establish procedures in order to ensure compliance by the City with its Continuing Disclosure Certificate, including timely provision of information and notices as described above. Prior to making any filing in accordance with clause (ii) above or providing notice of the occurrence of any other events, the Auditor shall consult with and obtain legal advice from, as appropriate, the Director of Law and bond or other qualified independent special counsel selected by the City. The Auditor, acting in the name and on behalf of the City, shall be entitled to rely upon any such legal advice in determining whether a filing should be made.

The City reserves the right to amend its Continuing Disclosure Agreement, and to obtain the waiver of noncompliance with any provision of the Continuing Disclosure Agreement, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency or formal defect or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted by the City. Any such amendment or waiver will not be effective unless the Continuing Disclosure Agreement (as amended or taking into account such waiver) would have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any applicable amendments to or official interpretations of the Rule, as well as any change in circumstances, and until the City shall have received: either (i) a written opinion of bond or other qualified independent special counsel selected by the City that the amendment or waiver would not materially impair the interests of holders or beneficial owners of the Bonds or (ii) the written consent to the amendment or waiver of the holders of at least a majority of the principal amount of the

Bonds then outstanding. Annual Information containing any revised operating data or financial information shall explain, in narrative form, the reasons for any such amendment or waiver and the impact of the change on the type of operating data or financial information being provided.

The City's Continuing Disclosure Agreement shall be solely for the benefit of the holders and beneficial owners from time to time of the Bonds. The exclusive remedy for any breach of the agreement by the City shall be limited, to the extent permitted by law, to a right of holders and beneficial owners to institute and maintain, or to cause to be instituted and maintained, such proceedings as may be authorized at law or in equity to obtain the specific performance by the City of its obligations under the agreement. Any individual holder or beneficial owner may institute and maintain, or cause to be instituted and maintained, such proceedings to require the City to provide or cause to be provided a pertinent filing if such a filing is due and has not been made. Any such proceedings to require the City to perform any other obligation under the Continuing Disclosure Agreement (including any proceedings that contest the sufficiency of any pertinent filing) shall be instituted and maintained only by a trustee appointed by the holders and beneficial owners of not less than 25% in principal amount of the Bonds then outstanding or by holders and beneficial owners of not less than 10% in principal amount of the Bonds then outstanding in accordance with Section 133.25(B)(4)(b) or (C)(1) of the Revised Code, as applicable (or any like or comparable successor provisions).

The performance by the City of its Continuing Disclosure Agreement shall be subject to the annual appropriation of any funds that may be necessary to perform it.

The City's Continuing Disclosure Agreement shall remain in effect only for such period that the Bonds are outstanding in accordance with their terms and the City remains an obligated person with respect to the Bonds within the meaning of the Rule. The obligation of the City to provide the Annual Information and notices of the events described above shall terminate, if and when the City no longer remains such an obligated person.

The Auditor is hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the Auditor determines to be necessary in connection with a book entry system for the Bonds, after approval of any such agreement by the Director of Law.

**SECTION 10. Certification and Delivery of Ordinance and Final Terms Certificate.** The Clerk of Council is directed to deliver a certified copy of this Ordinance and a signed copy of the Final Terms Certificate to the County Auditor of Fairfield County.

**SECTION 11. Satisfaction of Conditions for Bond Issuance.** 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 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 7) 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 12. Compliance with Open Meeting Requirements. 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 13. Emergency. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Bonds to enable the City to timely retire the Outstanding Note and thereby preserve its credit and to permit the Bonds to be combined with other bonds of the City in a consolidated bond issue and achieve savings in the cost of issuing the Bonds; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval of the Mayor.

Passed: \_\_\_\_\_ after \_\_\_\_\_ reading. Vote: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Clerk: \_\_\_\_\_

\_\_\_\_\_  
Mayor

The foregoing is a true and correct copy of Ordinance \_\_\_\_-10 as adopted by the Council of the City of Lancaster, Ohio at its meeting on \_\_\_\_\_, 2010.

Offered by: \_\_\_\_\_

Second by: \_\_\_\_\_

Requested by Finance Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2010 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

\_\_\_\_\_  
Clerk of Council