

**ORDINANCE 2021-14**

**AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF (I) PAYING COSTS OF IMPROVING THE VILLAGE'S WATERWORKS SYSTEM, AND (II) ACQUIRING LAND FOR A WATER PLANT RESERVOIR, IN EACH CASE TOGETHER WITH ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance No. 2019-28, passed by the Council on July 15, 2019, there was issued a \$607,500 Various Purpose Improvement Note, Series 2019, dated August 8, 2019, a portion of which was issued for the purposes stated in Section 1 (the Outstanding Note), which Outstanding Note is stated to mature on August 6, 2021; and

WHEREAS, this Council finds and determines that the Village should retire the Outstanding Note with the proceeds of the notes herein authorized and other funds available to the Village for that purpose; and

WHEREAS, the fiscal officer of this Village, has certified to this Council that (1) the estimated life or period of usefulness of each of the improvements described in Section 1 is at least five years; (2) the estimated maximum maturity of the bonds described in clause (i) of Section 1 is 17 years, and in clause (ii) of Section 1 is 28 years; and (3) the maximum maturity of the notes described in Section 3, to be issued in anticipation of the bonds described in clause (i) of Section 1 is August 28, 2023, and in clause (ii) of Section 1 is August 14, 2034;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Swanton, Counties of Fulton and Lucas, State of Ohio, that:

Section 1. It is necessary to issue bonds of this Village in the aggregate principal amount of not to exceed \$255,000 for the purpose of (i) paying costs of improving the Village's waterworks system, and (ii) acquiring land for a water plant reservoir, in each case together with all necessary appurtenances thereto (the "Bonds").

Section 2. The Bonds shall be dated approximately August 1, 2022; shall bear interest at the estimated rate of four per cent (4%) per year, payable semi-annually, until the principal amount is paid; and are estimated to mature in twenty-eight annual principal installments that are substantially equal on December 1 of each year. The first principal payment of the Bonds is estimated to be December 1, 2022.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of not to exceed \$255,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes. The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Fiscal Officer may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is any date not later than one year from the date of issuance by setting forth that maturity date in the certificate awarding the Notes and signed in accordance with Section 6 (the "Certificate of Award"). The Notes shall bear interest at a rate not to exceed 2.5% per year (computed on the basis of a 360-day year consisting of 12 30-day months and currently expected to be 1.43%), payable at maturity or at any date of earlier prepayment as provided for in Section 4 and until the principal amount is paid or payment is provided for. The rate of interest on the Notes shall be determined by the Fiscal Officer in 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 Fiscal Officer in the Certificate of Award, and shall be payable, without deduction for services of the Village's Paying Agent, at the designated corporate trust office or other office of a bank or trust company designated by the Fiscal Officer, after determining that the payment at that bank or trust company will not endanger the funds or securities of the Village and that proper procedures and safeguards are available for that purpose, or at the office of the Fiscal Officer if agreed to by the Fiscal Officer and the Original Purchaser (as defined in Section 6) (the Paying Agent). If agreed to by the Original Purchaser, the Notes shall be prepayable without

penalty or premium at the option of the Village on or after a date to be determined by the Fiscal Officer in the Certificate of Award (the Prepayment Date) as provided in this Ordinance and the Certificate of Award. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Notes together with interest accrued thereon to the Prepayment Date. The Village's right of prepayment shall be exercised by mailing a notice of prepayment, stating the Prepayment Date and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser and to the Paying Agent not less than seven days prior to the Prepayment Date. If money for prepayment is on deposit with the Paying Agent on the Prepayment Date following the giving of that notice, interest on the principal amount prepaid shall cease to accrue on the Prepayment Date. The Fiscal Officer may request the Original Purchaser to use its best efforts to arrange for the delivery of the Notes at the designated office of the Paying Agent for prepayment, surrender and cancellation.

Section 5. The Notes shall be signed by the Mayor and Fiscal Officer, in the name of the Village and in their official capacities, provided that one of those signatures may be a facsimile. The entire principal amount may be issued as fully registered securities in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code and as described in Section 4(b) if it is determined by the Director of Finance in the Certificate of Award that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. 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 Village and payable only to a Depository or its nominee, with such Notes deposited or maintained in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the Village 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 deposited or maintained 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 Village.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Fiscal Officer may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Fiscal Officer does not or is unable to do so, the Fiscal Officer, 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 to order 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 Village action or inaction, of those persons requesting such issuance.

The Fiscal Officer shall appoint, in the Certificate of Award, a bank or trust company to act as the authenticating agent, note registrar, transfer agent and Paying Agent for the Notes (the

“Note Registrar”) after determining that the payment at that bank or trust company will not endanger the funds or securities of the Village and that proper procedures and safeguards are available for that purpose. The Fiscal Officer may also serve as the Note Registrar.

The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Fiscal Officer, provided that no Note shall be issued in a denomination less than \$100,000 unless issued as part of a consolidated issue pursuant to Section 133.30(B) of the Revised Code, in which case no consolidated Note shall be issued in a denomination of less than \$100,000, and the entire principal amount may be represented by a single note. The Notes shall not have coupons attached, shall be numbered as determined by the Fiscal Officer 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. No Note shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance and such other proceedings of the Village, including the Notes, that provide collectively for, among other things, the rights of holders and beneficial owners of the Notes (the Note Proceedings) unless and until the certificate of authentication printed on the Note is signed by the Note Registrar as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Note so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this Ordinance. The certificate of authentication may be signed by any authorized officer or employee of the Note Registrar or by any other person acting as an agent of the Note Registrar and approved by the Fiscal Officer on behalf of the Village. The same person need not sign the certificate of authentication on all of the Notes.

Section 6. The Notes shall be sold at not less than par plus accrued interest to the original purchaser designated by the Fiscal Officer in the Certificate of Award (the Original Purchaser) in accordance with law and the provisions of this Ordinance and the Certificate of Award. The Fiscal Officer shall sign the Certificate of Award 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 Mayor, the Fiscal Officer, the Solicitor and other Village officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, paying agent agreement, note purchase agreement, placement agent agreement, term sheet and other commitments, documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Fiscal Officer is authorized, if it is determined to be in the best interest of the Village, to combine the issue of Notes with one or more other note issues of the Village into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.

Section 7. The proceeds from the sale of the Notes, except any premium and accrued interest, 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. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

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. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the Village, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. 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; provided, however, that in each year to the extent the income from the Village waterworks system is available for the payment of such notes and bond or a portion thereof and is appropriated for such purpose, the amount of such tax shall be reduced by the amount of the income so available and appropriated. 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 Notes or the Bonds when and as the same fall due.

Section 10. The Village 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, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be treated as an item of tax preference under Section 57 of the Code.

The Village 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, and (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 Village hereby represents that the Outstanding Note was designated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. The Village hereby covenants that it will redeem the Outstanding Note from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating an amount of the Notes not in excess of the amount of the Outstanding Note as "qualified tax-exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. Further, the Village represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations", 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 will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The Village further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

The Fiscal Officer, as fiscal officer, or any other officer of the Village 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 Village with respect to the Notes as the Village is permitted to or required to make or give under the federal income tax laws, 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, 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 Village, 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 Village, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the Village 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.

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 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 11. The Fiscal Officer is directed to deliver a certified copy of this Ordinance to the County Auditors of Fulton and Lucas Counties.

Section 12. This Council determines that all acts and conditions necessary to be done or performed by the Village or to have been met precedent to and in the issuing of the Notes in order to make them a legal, valid and binding general obligation of the Village of Swanton 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; that the full faith and credit and general property taxing power (as described in Section 10) of the Village are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 13. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the Village in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the Village or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Fiscal Officer is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Notes to the extent available and otherwise 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 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 15. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to provide the funds necessary to retire the Outstanding Note and thereby protect and preserve the Village's credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Motion to Suspend the Rules and Declare an Emergency

Moved: Rose                      Second: Stuart                      YEAS: 5                      NAYS: 0

Vote on Passage

Moved: Rochelle                      Second: Rose                      YEAS: 5                      NAYS: 0

Date of Passage: June 28, 2021



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Neil Toeppe, Mayor

Attest:

I, Jennifer Harkey, Fiscal Officer of the Village of Swanton, do hereby certify that this is a true and accurate copy of Ordinance 2021-13, passed on June 28, 2021



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Jennifer Harkey, Fiscal Officer