

ORDINANCE 2019-28

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 AND EXTENDING THE WATERWORKS SYSTEM OF THE VILLAGE BY CONSTRUCTING A WATER MAIN ALONG A PORTION OF MUNSON ROAD, (II) PAYING COSTS OF IMPROVING THE VILLAGE'S WATERWORKS SYSTEM, AND (III) ACQUIRING LAND FOR A WATER PLANT RESERVOIR, IN EACH CASE TOGETHER WITH ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2018-21, passed by the Council on July 16, 2018, there was issued a \$800,000 Various Purpose Improvement Note, Series 2010, dated August 10, 2018, 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 9, 2019; 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 22 years, in clause (ii) of Section 1 is 29 years, and in clause (iii) of Section 1 is 30 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 30, 2021, in clause (ii) of Section 1 is August 28, 2023, and in clause (iii) 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 \$607,500 for the purpose of (i) paying costs of improving and extending the waterworks system of the Village by acquiring and installing an additional reservoir intake pump, (ii) paying costs of improving the Village's waterworks system, and (iii) 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, 2021; shall bear interest at the estimated rate of six per cent (6%) per year, payable semi-annually, until the principal amount is paid; and are estimated to mature in thirty 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, 2021.

Section 3. It is necessary to issue and this Council hereby determines that notes in the aggregate principal amount of not to exceed \$607,500 shall be issued in anticipation of the issuance of the Bonds and to provide funds, together with other funds of the Village, to retire the Outstanding Note at its maturity. Those anticipatory notes shall be designated "Various Purpose Improvement Notes, Series 2019" (the "Notes").

The Notes will be dated August 8, 2019; will bear interest at a rate not to exceed 4.50% per year (computed on the basis of a 360-day year consisting of 12 30-day months) from their dated date, payable at maturity (each an Interest Payment Date) or at any date of earlier prepayment, and until the principal amount is paid or payment is provided for, and will be subject to mandatory redemption prior to maturity at a redemption price of 100% of the principal amount redeemed plus interest accrued to the redemption date:

Redemption Date	Principal Amount
08/07/2020	\$205,500

The balance of the Notes (\$402,000) will be payable at their stated maturity on August 6, 2021.

Section 4. 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 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.

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.

(b) Note Registrar. 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.

(c) Payment of Debt Charges. 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 when due upon presentation and surrender of the Notes at the main office of the Note Registrar. Interest on a Note shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Note was registered, and to that person's address appearing, on the Note Register (as defined in subsection (d) below) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date). Notwithstanding the foregoing, if and so long as a single note is issued to represent the entire issue in accordance with this Ordinance, principal and interest shall be paid upon presentation of the Note by the registered owner thereof to the Note Registrar for the proper endorsement of such payments (and surrender upon final payment).

(d) Registration; Transfer and Exchange. So long as any of the Notes remain outstanding, the Village will cause the Note Registrar to maintain and keep at its main office all books and records necessary for the registration, exchange and transfer of Notes as provided in this Section (the Note Register). The person in whose name a Note is registered on the Note Register shall be regarded as the absolute owner of that Note for all purposes of the Note Proceedings. Payment of or on account of the debt charges on any Note shall be made only to or upon the order of that person; neither the Village nor the Note 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 Village's liability upon the Note, including interest, to the extent of the amount or amounts so paid.

Any Note may be exchanged for Notes of any authorized denomination upon presentation and surrender at the main office of the Note 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 Note Registrar. A Note may be transferred only on the Note Register upon presentation and surrender of the Note at the main office of the Note 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 Note Registrar. Upon exchange or transfer the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Note surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the Village are required, the Note Registrar shall undertake the exchange or transfer of Notes only after the new Notes are signed by the authorized officers of the Village. In all cases of Notes exchanged or transferred, the Village shall sign and the Note Registrar shall authenticate and deliver Notes in accordance with the provisions of the Note Proceedings. The exchange or transfer shall be without charge to the owner, except that the Village and Note 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 Village or the Note Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Notes issued and authenticated upon any exchange or transfer shall be valid obligations of the Village, evidencing the same debt, and entitled to the same security and benefit under the Note Proceedings, as the Notes surrendered upon that exchange or transfer. Neither the Village nor the Note Registrar shall be required to make any exchange or transfer of a Note during the period beginning at the opening of business 15 days before the day of the mailing of a notice of prepayment of Notes and ending at the close of business on the day of such mailing or to transfer or exchange any Note selected for prepayment, in whole or in part.

Section 5. The Notes shall be and hereby are awarded and sold at not less than par to the Original Purchaser as designated in the Certificate of Award, in accordance with law and the provisions of this Ordinance. 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 Director of Finance, and other Village 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. In connection with the issuance of the Notes herein authorized, the legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained to act as bond counsel to this Village. 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 6. 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 7. 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 8. 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 9. 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 10. The Fiscal Officer is directed to deliver a certified copy of this Ordinance to the County Auditors of Fulton and Lucas Counties.

Section 11. 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 9) 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 12. 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. 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: Dzyak Second: Westhoven YEAS: 6 NAYS: 0

Vote on Passage

Moved: Dzyak Second: Westhoven YEAS: 6 NAYS: 0

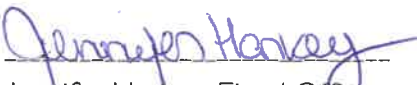
Date of Passage: July 15, 2019



Ann Roth, 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 2019-28, passed on July 15, 2019



Jennifer Harkey, Fiscal Officer