

Ordinance No. 18-2023

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF UNVOTED GENERAL OBLIGATION NOTES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$1,000,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF VARIOUS MUNICIPAL PUBLIC IMPROVEMENT PROJECTS AND DECLARING AN EMERGENCY**

**WHEREAS**, pursuant to Ordinance No. 15-22 passed August 8, 2022, notes in anticipation of bonds in the aggregate amount of \$1,250,000, dated September 29, 2022 (the "*Outstanding Notes*"), were issued for the component purposes described in Section 1, to mature on September 28, 2023; and

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

**WHEREAS**, this Council has requested that the Director of Finance, as fiscal officer of this Village, certify the estimated life or period of usefulness of each component purpose of the Improvement described in Section 1, the estimated maximum maturity of the Bonds described in Section 1 and the maximum maturity of the Notes described in Section 3 to be issued in anticipation of the Bonds; and

**WHEREAS**, the Director of Finance has certified to this Council that the estimated life or period of usefulness of each component purpose of the Improvement described in Section 1 is at least five (5) years, the weighted average estimated maximum maturity of the Bonds described in Section 1 is fourteen (14) years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, in clause (a) of Section 1 is October 10, 2039 for the \$969 portion of the Notes and October 10, 2029 for the \$85,294 portion of the Notes, in clause (b) of Section 1 is May 14, 2029 for the \$30,697 portion of the Notes and October 10, 2030 for the \$94,411 portion of the Notes, in clause (c) of Section 1 is May 16, 2037 for the \$188,121 portion of the Notes, May 14, 2038 for the \$168,371 portion of the Notes and October 10, 2039 for the \$91,329 portion of the Notes, in clause (d) of Section 1 is May 16, 2037 for the \$228,229 portion of the Notes and October 10, 2039 for the \$19,626 portion of the Notes, and in clause (e) of Section 1 is May 14, 2028 for the \$81,029 portion of the Notes and October 10, 2029 for the \$11,924 portion of the Notes;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of Plain City, Ohio, a majority of the members elected or appointed thereto concurring, that:

**Section 1.** It is necessary to issue bonds of this Village in the maximum aggregate principal amount of \$1,000,000 (the "*Bonds*") for the purpose of paying the costs of (a) constructing, furnishing, equipping and improving municipal facilities, together with related site improvements and all necessary appurtenances thereto, (b) acquiring, constructing, expanding, repairing, rehabilitating and otherwise improving the municipal sewer system, together with all

necessary appurtenances thereto, (c) constructing, reconstructing and paving streets and related public infrastructure, together with all necessary appurtenances thereto, (d) acquiring, constructing, expanding, repairing, rehabilitating and otherwise improving the municipal water system, together with all necessary appurtenances thereto and (e) acquiring vehicles and related equipment for Village purposes, together with all necessary appurtenances thereto (collectively, the “*Improvement*”).

**Section 2.** The Bonds shall be dated approximately October 1, 2024, shall bear interest at the now estimated rate of 6.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in fourteen (14) annual principal installments on December 1 of each year and in such amounts that the total principal and interest payments on the Bonds, in any fiscal year in which principal is payable, shall be substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2025.

**Section 3.** It is necessary to issue and this Council determines that notes in the maximum aggregate principal amount of \$1,000,000 (the “*Notes*”) shall be issued in anticipation of the issuance of the Bonds for the component purposes described in Section 1 and to retire, together with other funds available to the Village, the Outstanding Notes and to pay any financing costs. The aggregate principal amount of Notes to be issued (not to exceed the aggregate of the maximum amount for each component purpose) shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (the “*Certificate of Award*”) as the amount which, along with other available funds of the Village, is necessary to provide for the retirement of the Outstanding Notes and to pay any financing costs. The Notes shall be dated the date of issuance and shall mature not more than one year following the date of issuance, *provided* that the Director of Finance shall establish the maturity date in the Certificate of Award. The Notes shall bear interest at a rate or rates not to exceed 7.00% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award in accordance with Section 6 of this Ordinance.

**Section 4.** The debt charges on the Notes shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the Village’s paying agent, at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award after determining that the payment at that bank or trust company will not endanger the funds or securities of the Village and that proper procedures and safeguards are available for that purpose or at the office of the Director of Finance if agreed to by the Director of Finance and the original purchaser (the “*Paying Agent*”).

The Administrator and the Director of Finance shall sign and deliver, in the name and on behalf of the Village, the Note Registrar Agreement between the Village and the Paying Agent, in substantially the form as is now on file with the Clerk of Council. The Note Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the Village and that are approved by the Administrator and the Director of Finance on behalf of the Village, all of which shall be conclusively evidenced

by the signing of the Note Registrar Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Note Registrar Agreement, except to the extent paid or reimbursed by the original purchaser in accordance with the Certificate of Award, from the proceeds of the Notes to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

**Section 5.** The Notes shall be signed by the Administrator and the Director of Finance, 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 minimum denominations of \$100,000 (and may be issued in denominations in such amounts in excess thereof as requested by the original purchaser and approved by the Director of Finance) and with numbers as requested by the original purchaser and approved by the Director of Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Ohio Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this Section and this Ordinance:

*“Book entry form”* or *“book entry system”* means a form or system under which (a) 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 (b) a single physical Note certificate in fully registered form is issued by the Village and payable only to a Depository or its nominee as registered owner, with the certificate deposited with and “immobilized” in the custody of the Depository or its designated 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 registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, 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 securities 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, (a) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (b) the beneficial owners in book entry form shall have no right to receive

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

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

**Section 6.** The Notes shall be sold at not less than par plus accrued interest (if any) at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance. The Director of Finance shall sign the Certificate of Award referred to in Section 3 fixing the interest rate or rates which the Notes shall bear and evidencing that sale to the original purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price.

The Note Purchase Agreement between the Village and the original purchaser and now on file with the Clerk of Council is approved, and the Administrator and the Director of Finance are authorized to sign and deliver, on behalf of the Village, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the Village and are approved by the Administrator and the Director of Finance. Any such changes to the Note Purchase Agreement are not materially adverse to the interests of the Village and are approved by the Administrator and the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the Administrator and the Director of Finance.

The Mayor, the Administrator, the Director of Finance, the Director of Law, the Clerk of Council and other Village officials, as appropriate, and any person serving in an interim or acting capacity for any such official, 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. Any actions heretofore taken by the Mayor, the Administrator, the Director of Finance, the Director of Law,

the Clerk of Council or other Village official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Notes are hereby ratified and confirmed. The Director of Finance 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 Ohio Revised Code.

To the extent that the Director of Finance determines that it would be in the best interest of the Village and elects to utilize the Ohio Market Access Program (the "*Ohio Market Access Program*") which is administered by the Treasurer of the State of Ohio (the "*Treasurer*"), the Administrator and the Director of Finance are authorized to sign and deliver, in the name and on behalf of the Village, the Standby Note Purchase Agreement (the "*Standby Note Purchase Agreement*") in substantially the form as presented to this Village Council with such changes as are not materially adverse to the Village and as may be approved by the officers of the Village executing the Standby Note Purchase Agreement. The Village acknowledges the agreement of the Treasurer in the Standby Note Purchase Agreement that, in the event the Village is unable to repay the principal amount and accrued and unpaid interest of the Notes at their maturity, whether through its own funds or through the issuance of other obligations of the Village, the Treasurer agrees to (a) purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer for such purchase at a price of par plus accrued interest to maturity or (b) purchase renewal notes of the Village in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at the Renewal Note Rate (as defined in the Standby Note Purchase Agreement), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer's purchase of such renewal notes the Village shall deliver to the Treasurer an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid and binding general obligations of the Village, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes, within the ten-mill limitation imposed by law, on all property subject to ad valorem taxes levied by the Village and (ii) interest on the renewal notes is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code, as amended, to the same extent that interest on the Notes is so excluded.

The officers signing the Notes are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note Purchase Agreement, including but not limited to the inclusion of a notation on the form of the Notes providing notice to the holders or beneficial owners of the existence of the Standby Note Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Note for purchase by the Treasurer at stated maturity.

**Section 7.** The proceeds from the sale of the Notes received by the Village (or withheld by the original purchaser or deposited with the Paying Agent, in each case on behalf of the Village) shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. The Certificate of Award and the Note Purchase Agreement may authorize the original purchaser to (a) withhold certain proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the Notes to the Paying Agent, in each case to provide for the payment of certain financing costs on behalf of the Village. If

proceeds are remitted to the Paying Agent in accordance with this Section 7, the Paying Agent shall be authorized to create a fund in accordance with the Note Registrar Agreement for that purpose. Any portion of those proceeds received by the Village (after payment of those financing costs) representing premium or 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. 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.

In each year to the extent net revenues from the municipal sewer system are available for the payment of the debt charges on the Notes or the Bonds issued for the component purpose described in clause (b) of Section 1 and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of such net revenues so available and appropriated.

In each year to the extent net revenues from the municipal water system are available for the payment of the debt charges on the Notes or the Bonds issued for the component purpose described in clause (d) of Section 1 and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of such net revenues so available and appropriated.

Nothing in the two preceding paragraphs in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the Village to the prompt payment of the debt charges on the Notes or the Bonds.

**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 or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

The 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, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii)

restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the 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, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Notes, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Notes, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the 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. The Director of Finance or any other officer of the Village having responsibility for issuance of the Notes is specifically authorized to designate the Notes as “qualified tax-exempt obligations” if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure the exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Notes.

**Section 11.** The Director of Finance is authorized to request a rating for the Notes from Moody’s Investors Service, Inc. or S&P Global Ratings, or both, as the Director of Finance determines is in the best interest of the Village. The expenditure of the amounts necessary to secure any such ratings as well as to pay the other financing costs (as defined in Section 133.01 of the Ohio Revised Code) in connection with the Notes is hereby authorized and approved and the amounts necessary to pay those costs are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

**Section 12.** The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations

as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this Village in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State of Ohio, any county or municipal corporation or of this Village, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

**Section 13.** The services of Rockmill Financial Consulting, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those municipal advisory services, as an independent contractor, 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 of Ohio, the Village or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Note Purchase Agreement and/or the Note Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Notes, if available, and otherwise from available moneys in the General Fund.

**Section 14.** The Director of Finance is directed to promptly deliver or cause to be delivered a certified copy of this Ordinance to the County Auditors of Madison and Union Counties, Ohio.

**Section 15.** 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 legal, valid and binding general obligations of the Village 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 16.** This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

**Section 17.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare 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 enable the Village to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: August 28, 2023.

Attest: Austin Phoenix  
Clerk of Council

Jody Carney  
Mayor

First reading: August 14, 2023. Vote: \_\_\_ yea \_\_\_ nay \_\_\_ abstain

Second reading: August 28, 2023. Vote: 5 yea \_\_\_ nay \_\_\_ abstain

**Certificate of Publication**

The undersigned, being the Clerk of Council of the Village of Plain City, Ohio, hereby certifies that the foregoing was published by posting for fifteen (15) days as required by law and in accordance with Section 4.15 of the Codified Ordinances. The posting was done from August 29, 2023 to September 13, 2023 at the Office of the Clerk of Council located at 800 Village Boulevard, all being in the Village of Plain City, Ohio and the Village of Plain City website at [www.plain-city.com](http://www.plain-city.com).

Date: August 29, 2023

Austin Phoenix  
Clerk of Council