



Terry Emery

ORDINANCE 037-2022

TO AUTHORIZE THE ISSUANCE OF NOTES IN THE AMOUNT OF NOT TO EXCEED \$1,535,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF (I) DESIGNING, ENGINEERING, AND CONSTRUCTING VARIOUS STREET IMPROVEMENT PROJECTS, WITH SITE AND CURB IMPROVEMENTS RELATING THERETO, (II) CONSTRUCTING VARIOUS IMPROVEMENTS TO PARKS AND RECREATION FACILITIES, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO, (III) CONSTRUCTING AND IMPROVING VARIOUS STREET RESURFACING AND PAVING PROJECTS THROUGHOUT THE CITY, (IV) ACQUIRING VARIOUS FIRE, POLICE AND EMS EQUIPMENT, WITH RELATED IMPROVEMENTS AND APPURTENANCES, (V) ACQUIRING, DEVELOPING, DESIGNING, IMPROVING AND INSTALLING INFORMATION SYSTEMS AND RELATED INFORMATION TECHNOLOGY, AND (VI) PAYING COSTS ASSOCIATED WITH DESIGNING, CONSTRUCTING, FURNISHING, AND EQUIPPING A NEW FIRE STATION, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO; AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE; AND AUTHORIZING AND APPROVING RELATED MATTERS

WHEREAS, the City Council (the "Council") of the City of Marysville, Ohio (the "City") has issued notes dated August 18, 2021 in the aggregate principal amount of \$1,835,000, which will mature August 17, 2022 (the "Outstanding Notes"), in anticipation of the issuance of bonds described herein; and

WHEREAS, it appears advisable in lieu of issuing bonds at this time to issue new notes in anticipation of the issuance of bonds, and to retire all, or a portion, of the Outstanding Notes; and

WHEREAS, the Director of Finance of the City (the "Director of Finance") has certified to this Council that the estimated life of the improvements described in the title of this Ordinance (the "Project") which are to be financed with the proceeds of bonds and notes herein described exceeds five years, the maximum maturity of bonds being 14 years and notes being 10 years; now, therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARYSVILLE, OHIO, That:

Section I. Issuance of Bonds. It is hereby declared necessary to issue bonds (the "Bonds") of the City in the principal sum of not to exceed \$1,535,000, for the purpose of paying the cost of the Project.

Section II. Terms of the Bonds. The Bonds shall be dated prior to the maturity date of the Notes (as defined hereinbelow), shall bear interest at the maximum average annual interest rate presently estimated to be 5.00% per annum, payable semiannually until the principal sum is paid, and shall mature in no more than 14 annual installments.

Section III. Issuance of Bond Anticipation Notes. It is necessary to issue, and this Council hereby determines that there shall be issued, notes (the "Notes") in anticipation of the issuance of the Bonds.

Section IV. Terms of the Notes; Certificate of Fiscal Officer Relating to Terms of Notes. The Notes shall be in the amount of not to exceed \$1,535,000, or such lesser amount as shall be determined by the Director of Finance and certified to this Council, which sum does not exceed the amount of the Bonds. The Notes shall bear interest at such rate per annum as shall be determined by the Director of Finance and certified to this Council, provided that such rate shall not exceed 5.00% per annum, based on a 360-day year of twelve 30-day months, payable at maturity, unless otherwise determined in the Certificate of Fiscal Officer provided for herein below. The Notes shall mature on such date as shall be determined by the Director of Finance and set forth in the Certificate of Fiscal Officer provided for herein, provided that such date shall not be later than one year after the date of issuance of the Notes. The Notes shall be issued as fully registered notes, in book-entry form, in such denominations as shall be determined by the Director of Finance, but not exceeding the principal amount of the Notes maturing on any one date, until the principal sum is paid or provision has been duly made therefor, and shall be numbered as determined by the Director of Finance and set forth in the Certificate of Fiscal Officer provided for herein. The Notes shall be sold in a transaction exempt from the requirements of Rule 15c2-12 of the United States Securities and Exchange Commission.

The Director of Finance is hereby authorized and directed to execute a Certificate of Fiscal Officer Relating to Terms of Notes (the "Certificate of Fiscal Officer"), setting forth the final terms of the Notes, consistent with the requirements of this Ordinance, and to present the same to Council after closing.

Section V. General Obligation Pledge. The Notes shall be the full general obligation of the City, and the full faith, credit and revenue of the City are hereby pledged for the prompt payment of the same. The par value to be received from the sale of the Bonds and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used only for the retirement of the Notes at maturity and are hereby pledged for such purpose.

Section VI. Debt Service Levy. There shall be and is hereby levied annually on all the taxable property in the City, in addition to all other taxes and inside the City's charter millage limitation, a direct tax (the "Debt Service Levy") for each year during which any of the Notes are outstanding, in an amount not less than that which would have been levied if the Bonds had been issued without the prior issuance of the Notes, for the purpose of providing, and in an amount which is sufficient to provide, funds to pay interest upon the Notes as and when the same falls due and to provide a fund for the repayment of the principal of the Notes at maturity or upon redemption. The Debt Service Levy shall not be less than the interest and sinking fund tax required by Article XII, Section 11 of the Ohio Constitution.

The Debt Service Levy shall be and is hereby 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 such years are certified, extended and collected. The Debt Service Levy shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from the Debt Service Levy shall be placed in a separate and distinct fund, which shall be irrevocably pledged for the payment of premium, if any, and interest on and principal of the Notes and Bonds when and as the same falls due. Notwithstanding the foregoing, if the City determines that funds will be available from other sources for the payment of the Notes and Bonds in any year, the amount of the Debt Service Levy for such year shall be reduced by the amount of funds which will be so available, and the City shall appropriate such funds to the payment of the Notes and Bonds in accordance with law.

Section VII. Income Tax Pledge. The City hereby covenants, pursuant to Ohio Revised Code Section 133.05(B)(7) to appropriate annually from lawfully available municipal income taxes, and to continue to levy and collect municipal income taxes adequate to produce, amounts necessary to meet the debt charges on the Notes and the Bonds in each year until full payment is made.

Section VIII. Sale of Notes. The Notes shall be sold to such purchaser or purchasers (collectively, the "Original Purchaser") as the Director of Finance shall designate in the Certificate of Fiscal Officer, at a purchase price set forth in the Certificate of Officer, plus accrued interest, if any, to the date of delivery. The Director of Finance is authorized and directed to execute on behalf of the City a note purchase agreement, term sheet or similar document with the Original Purchaser setting forth the conditions under which the Notes are to be sold and delivered, which document shall be in such form and shall contain such terms, covenants and conditions not inconsistent with the terms of this Ordinance.

The Director of Finance is hereby authorized and directed to deliver the Notes, when executed, to the Original Purchaser upon payment of the purchase price and accrued interest, if any, to the date of delivery. The proceeds of such sale, except any accrued interest or premium thereon, shall be deposited in the Treasury of the City and used for the purpose aforesaid and for no other purpose. Any accrued interest received from the sale of the Notes shall be transferred to the City's bond retirement fund to be applied to the payment of the principal of and interest on the Notes, or other obligations of the City, as permitted by law. Any premium received from the sale of the Notes may be used to pay the financing costs of the Notes within the meaning of Ohio Revised Code Section 133.01(K) or be deposited into the bond retirement fund in the manner provided by law.

Section IX. Form and Execution of Notes; Payment of Notes. The Notes shall be executed by the Director of Finance and the City Manager of the City (the "City Manager"), in their official capacities, provided that either or both of their signatures may be a facsimile, and shall be designated "City of Marysville, Ohio Various Purpose Notes, Series 2022B," or as otherwise

determined by the Director of Finance. The Notes shall express upon their faces the purpose for which they are issued and that they are issued pursuant to this Ordinance.

The Notes shall be payable as to principal and interest at the office of the Note Registrar (as defined hereinbelow) in lawful money of the United States of America without deduction for the services of the Note Registrar. No Note shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Ordinance unless and until a certificate of authentication, as printed on the Note, is signed by the Note Registrar as authenticating agent. Authentication by the Note Registrar shall be conclusive evidence that the Notes so authenticated have been duly issued and delivered under this Ordinance and are entitled to the security and benefit of this Ordinance. The certificate of authentication may be signed by any officer or officers of the Note Registrar or by such other person acting as an agent of the Note Registrar as shall be approved by the Director of Finance on behalf of the City. It shall not be necessary that the same authorized person sign the certificate of authentication on all of the Notes.

Section X. Appointment of Note Registrar. The Director of Finance is hereby authorized and directed to execute on behalf of the City a Note Registrar Agreement with such bank or other appropriate financial institution as shall be acceptable to the Director of Finance and the Original Purchaser, pursuant to which such bank or financial institution shall agree to serve as authenticating agent, note registrar, transfer agent, and paying agent (the "Note Registrar") for the Notes. Interest shall be payable at maturity by check or draft mailed to the Registered Owner hereof, as shown on the registration books of the City maintained by the Note Registrar. If at any time the Note Registrar shall be unable or unwilling to serve as such, or the Director of Finance in such officer's discretion shall determine that it would be in the best interest of the City for such functions to be performed by another party, the Director of Finance may, and is hereby authorized and directed to, enter into an agreement with a national banking association or other appropriate institution experienced in providing such services, to perform the services required of the Note Registrar hereunder. Each such successor Note Registrar shall promptly advise all noteholders of the change in identity and new address of the Note Registrar. So long as any of the Notes remain outstanding, the City shall cause to be maintained and kept by the Note Registrar, at the office of the Note Registrar, all books and records necessary for the registration, exchange and transfer of Notes as provided in this Section (the "Note Register"). Subject to the provisions of this Ordinance, the person in whose name any Note shall be registered on the Note Register shall be regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any Note shall be made only to or upon the order of that person. Neither the City nor the Note Registrar shall be affected by any notice to the contrary, but the registration may be changed as herein provided. All payments shall be valid and effectual to satisfy and discharge the liability upon the Notes, including the interest thereon, to the extent of the amount or amounts so paid.

Any Note, upon presentation and surrender at the office of the Note Registrar, together with a request for exchange signed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar, may be exchanged for

Notes of the same form and of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

A Note may be transferred only on the Note Register upon presentation and surrender thereof at the office of the Note Registrar, together with an assignment executed by the registered owner or by a person authorized by the owner to do so by a power of attorney in a form satisfactory to the Note Registrar. Upon that transfer, the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations equal in the aggregate to the unmatured principal amount of the Notes surrendered, and bearing interest at the same rate and maturing on the same date.

The City and the Note Registrar shall not be required to transfer or exchange (i) any Note during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of Notes, and ending at the close of business on the day of such mailing, or (ii) any Notes selected for redemption, in whole or in part, following the date of such mailing.

In all cases in which Notes are exchanged or transferred hereunder, the City shall cause to be executed, and the Note Registrar shall authenticate and deliver, the Notes in accordance with the provisions of this Ordinance. The exchange or transfer shall be without charge to the owner; except that the Council 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 Council or the Note Registrar may require that those charges, if any, be paid before it begins the procedure for the exchange or transfer of the Notes. All Notes issued upon any transfer or exchange shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under this Ordinance, as the Notes surrendered upon that transfer or exchange.

Section XI. Book-Entry System. For purposes of this Ordinance, the following terms shall have the following meanings:

- "Book-entry form" or "book-entry system" means a form or system under which (i) the beneficial right to payment of principal of and interest on the Notes may be transferred only through a book-entry and (ii) physical Notes in fully registered form are issued only to a Depository or its nominee as registered owner, with the Notes "immobilized" to the custody of the Depository, and the book-entry is the record that identifies the owners of beneficial interests in those Notes.
- "Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its participants, a book-entry system to record beneficial ownership of Notes, and to effect transfers of securities, in book-entry form, and includes The Depository Trust Company (a limited purpose trust company), New York, New York.

The Notes may be initially issued to a Depository for use in a book-entry system, and the provisions of this Section shall apply, notwithstanding any other provision of this Ordinance: (i) there shall be a single Note of each maturity; (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners in book-entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book-entry form shall be shown by book-entry on the system maintained and operated by the Depository, and transfers of the ownership of beneficial interests shall be made only by the Depository and by book-entry; and (v) 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 Council. Debt service charges on Notes in book-entry form registered in the name of a Depository or its nominee shall be payable in same day funds delivered to the Depository or its authorized representative (i) in the case of interest, on each Interest Payment Date, and (ii) in all other cases, upon presentation and surrender of Notes as provided in this Ordinance.

The Note Registrar may, with the approval of this Council, enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this Ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the Note Registrar and this Council. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The Note Registrar shall furnish a copy of each of those agreements, certified to be correct by the Note Registrar, to other paying agents for Notes and to the City. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Ordinance.

If requested, the Director of Finance and City Manager, Clerk of Council or any other officer of this Council, including the Mayor, as Council President, is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the City, an agreement among the City, the Note Registrar and a Depository to be delivered in connection with the issuance of the Notes to such Depository for use in a book-entry system.

The City may decide to discontinue use of the book-entry system through the Depository. In that event, Note certificates will be printed and delivered to the Depository.

If any Depository determines not to continue to act as the Depository for the Notes for use in a book-entry system, the City and the Note Registrar may attempt to establish a securities depository/book-entry relationship with another qualified Depository under this Ordinance. If the City and the Note Registrar do not or are unable to do so, the City and the Note Registrar, after the Note Registrar has made provision for notification of the beneficial owners by the

then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver note certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing and delivering definitive Notes), if the event is not the result of action or inaction by the City or the Note Registrar, of those persons requesting such issuance.

Section XII. Federal Tax Law Compliance. The City hereby covenants that it will comply with the requirements of all existing and future laws which must be satisfied in order that interest on the Notes is and will continue to be excluded from gross income for federal income tax purposes, including without limitation restrictions on the use of the property financed with the proceeds of the Notes so that the Notes will not constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The City further covenants that it will restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed thereunder (the "Regulations").

The Director of Finance, or any other officer of the City, is hereby authorized and directed (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City with respect to the Notes as permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the Director of Finance, which action shall be in writing and signed by the Director of Finance, or any other officer of the City, on behalf of the City; (b) to take any and all actions, make or obtain calculations, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes; and (c) to give an appropriate certificate on behalf of the City, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the City pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the City regarding compliance by the City with Sections 141 through 150 of the Code and the Regulations.

The Director of Finance shall keep and maintain adequate records pertaining to the use and investment of all proceeds of the Notes sufficient to permit, to the maximum extent possible and presently foreseeable, the City to comply with any federal law or regulation now or hereafter having applicability to the Notes which limits the amount of Note proceeds which may be invested on an unrestricted yield or requires the City to rebate arbitrage profits to the United States Department of the Treasury. The Director of Finance is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department

of the Treasury, to the extent that any federal law or regulation having applicability to the Notes requires any such reports or rebates.

Section XIII. Appointment of Municipal Advisor. The appointment of Bradley Payne, LLC, to serve as municipal advisor to the City in connection with the issuance of the Notes is hereby approved. The fees to be paid to such firm shall be subject to review and approval of the Director of Finance, shall not exceed the fees customarily charged for such services, and shall be paid upon closing of the financing from proceeds of the Notes.

Section XIV. Appointment of Bond Counsel. The appointment of the law firm of Bricker & Eckler LLP to serve as Bond Counsel with respect to the issuance of the Notes is hereby approved. The fees to be paid to such firm shall be subject to review and approval by the Director of Finance, shall not exceed the fees customarily charged for such services, and shall be paid upon closing of the financing from proceeds of the Notes.

Section XV. Transcript of Proceedings; Execution of Additional Documents. The officer having charge of the minutes of the Council and any other officers of the Council, or any of them individually, are hereby authorized and directed to prepare and certify a true transcript of proceedings pertaining to the Notes and to furnish a copy of such transcript to the Original Purchaser. Such transcript shall include certified copies of all proceedings and records of the Council relating to the power and authority of the City to issue the Notes and certificates as to matters within their knowledge or as shown by the books and records under their custody and control, including but not limited to a general certificate of the Clerk of Council and a no-litigation certificate of the City Manager and Director of Finance, and such certified copies and certificates shall be deemed representations of the City as to the facts stated therein. Except for the procedure for authenticating the Notes set forth in Section 9 herein, documents (including this Ordinance) executed, scanned and transmitted electronically and electronic and digital signatures shall be deemed original signatures for said transcript of the Notes, for the purposes of this Ordinance, and for all matters related thereto, with any such scanned, electronic, and digital signatures having the same legal effect as original signatures.

The City Manager and Director of Finance, or other appropriate officers of the City, are hereby authorized and directed to take such action and to execute and deliver, on behalf of this Council, such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as they in their discretion shall deem necessary or appropriate.

Section VXI. Satisfaction of Conditions for Issuance. It is hereby found and determined that all acts, conditions and things necessary to be done precedent to and in the issuing of the Notes in order to make them legal, valid and binding obligations of the City have happened, been done and been performed in regular and due form as required by law; that the full faith, credit and revenue of the City are hereby irrevocably pledged for the prompt payment of the principal and

interest thereof at maturity; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing the Notes.

Section XVII. Compliance with Open Meeting Requirements. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section XVIII. Filing of Note Ordinance. The Clerk of Council is hereby directed to forward a certified copy of this Ordinance to the Auditor of Union County, Ohio.

Section XIX. Effective Date. This Ordinance shall take effect and be in force at the earliest date permitted by law.

1st Reading June 13, 2022



PRESIDENT OF COUNCIL

2nd Reading June 27, 2022

3rd Reading Waived June 27, 2022

ATTEST:

Passed: June 27, 2022



CLERK OF COUNCIL

APPROVED AS TO FORM:



Law Director Date 6/9/22