

VILLAGE OF BOSTON HEIGHTS	Codified?	First Reading <u> X </u>	Waiver 3-Reading Rule <u> </u>
ORDINANCE NO: <u> 2017-4-11 </u>	Yes <u> X </u>	Second Reading <u> </u>	Yes <u> X </u>
INTRODUCED BY <u> R. ANTAL </u>	No <u> </u>	Third Reading <u> </u>	No <u> </u>

ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$3,585,000 TO REFUND A PORTION OF NOTES PREVIOUSLY ISSUED BY THE VILLAGE TO PAY THE COSTS OF VARIOUS IMPROVEMENTS IN THE VILLAGE; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the Village of Boston Heights:

Section 1. Definitions. Words and terms are used in this ordinance with the following meanings:

“Annual Information” means the annual financial information and operating data of the type to be specified in the Continuing Disclosure Certificate in accordance with the SEC Rule.

“Authorized Denominations” means the denomination of \$5,000 or any whole multiple of \$5,000.

“Bond Proceedings” means, collectively, this ordinance, the Certificate of Award, the Continuing Disclosure Agreement, the Registrar Agreement, and the other proceedings of the Village, including the Various Purpose Bonds, that provide collectively for, among other things, the rights of Holders and beneficial owners of the Various Purpose Bonds.

“Capital Appreciation Bonds” means those Various Purpose Bonds designated as Capital Appreciation Bonds in the Certificate of Award and bearing interest compounded on each Interest Payment Date and payable at maturity.

“Certificate of Award” means the certificate authorized by Section 7 of this ordinance, setting forth the terms and other provisions of the Various Purpose Bonds required or authorized by this ordinance.

“Closing Date” means the date of delivery of and payment for the Various Purpose Bonds.

“Code” means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code include applicable regulations (whether temporary or final) under the Code, and any amendments of, or successor provisions to, those sections or regulations.

“Compound Accreted Amount” means, for a Capital Appreciation Bond, the Original Principal Amount of the Capital Appreciation Bond, plus interest accrued and compounded on each Interest Payment Date or other date of determination. The Compound Accreted Amount of a Capital Appreciation Bond as of any date other than an Interest Payment Date is the sum of

(a) the Compound Accreted Amount for the most recent Interest Payment Date, plus

(b) the product of (1) times (2) where

(1) is the difference between

(A) the Compound Accreted Amount of that Capital Appreciation Bond on the most recent Interest Payment Date, and

(B) the Compound Accreted Amount of that Capital Appreciation Bond on the next Interest Payment Date, and

(2) is the ratio of

(A) the number of days from the most recent Interest Payment Date to the date of calculation, to

(B) the total number of days from the most recent Interest Payment Date to the next Interest Payment Date.

In determining the Compound Accreted Amount of a Capital Appreciation Bond as of a determination date before the first Interest Payment Date, the Closing Date is treated as the most recent Interest Payment Date and the Original Principal Amount of that Capital Appreciation Bond is treated as the Compound Accreted Amount as of the Closing Date.

“Continuing Disclosure Agreement” means the continuing disclosure agreement made by the Village for the benefit of Holders and beneficial owners of the Various Purpose Bonds in accordance with the SEC Rule. It consists of the covenants in Section 8(b) of this ordinance and the Continuing Disclosure Certificate.

“Continuing Disclosure Certificate” means the certificate authorized by Section 8(b).

“Current Interest Bonds” means those Various Purpose Bonds designated as Current Interest Bonds in the Certificate of Award and bearing interest payable on each Interest Payment Date.

“Debt Service” means all amounts due as principal, interest, and any premium on an issue of securities.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in securities or the principal of and interest on securities, and to effect transfers of securities in book-entry form, and means initially The Depository Trust Company, New York, New York, a limited purpose trust company.

“EMMA System” means the MSRB’s Electronic Municipal Market Access System.

“Federal Tax Status” means the status of the interest as excludable from gross income for federal income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax.

“Financing Costs” means any financing costs authorized to be paid by Section 133.01(K), Ohio Revised Code.

“Holder” means, as to any Various Purpose Bond, the person in whose name the Various Purpose Bond is registered on the Register.

“Interest Payment Dates” means June 1 and December 1 of each year, beginning on the first Interest Payment Date designated by the Fiscal Officer in the Certificate of Award.

“Mandatory Redemption Dates” means December 1 in each of the years designated in the Certificate of Award as Mandatory Redemption Dates.

“Mandatory Sinking Fund Redemption” means redemption in accordance with the mandatory redemption requirements, if any, for the Various Purpose Bonds as determined in the Certificate of Award and as described in Section 3(d).

“Maturity Amount” means, as to a Capital Appreciation Bond, the principal and interest due at stated maturity on that Capital Appreciation Bond.

“MSRB” means the Municipal Securities Rulemaking Board.

“Original Principal Amount” means (a) as to a Current Interest Bond, the face amount, and (b) as to a Capital Appreciation Bond, the principal amount that, when added to the interest on that principal amount accrued and compounded to the Principal Payment Date for that Capital Appreciation Bond, results in the Maturity Amount for that Capital Appreciation Bond.

“Original Purchaser” means the original purchaser of the Various Purpose Bonds designated in the Certificate of Award, in accordance with Section 9(b).

“Outstanding Notes” means the Village’s \$3,360,000 Various Purpose Bond Anticipation Notes, Series 2016 dated May 31, 2016.

“Principal Payment Dates” means December 1 of the years set forth in the table in Section 3(c) of this ordinance or in the Certificate of Award.

“Project” means, collectively, the School District Project, the Street Improvement Project, the Street Resurfacing Project and the Water Project.

“Purchase Agreement” means any Bond Purchase Agreement between the Village and the Original Purchaser, entered into in accordance with Section 7.

“Register” means all books and records necessary for the registration, exchange, and transfer of the Various Purpose Bonds.

“Registrar” means the entity designated as the Registrar by the Fiscal Officer in the Certificate of Award in accordance with Section 9(d).

“Registrar Agreement” means the Bond Registrar Agreement between the Village and the Registrar.

“School District Project” means paying the Village’s share of the costs of acquiring, constructing, equipping and improving the Malson Athletic Center in accordance with Section 5709.82 of the Ohio Revised Code.

“SEC Rule” means SEC Rule 15c2-12.

“Serial Bonds” means Various Purpose Bonds designated as Serial Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and not subject to Mandatory Sinking Fund Redemption.

“Specified Events” means any of the events specified in SEC Rule Section (b)(5)(i)(C), as in effect and applicable to the Various Purpose Bonds at the time of the primary offering of the Various Purpose Bonds.

“Street Improvement Project” means paying the costs constructing, reconstructing, widening and otherwise improving Hines Hill Road and relocating sanitary sewer lines in connection therewith.

“Street Resurfacing Project” means paying the costs of resurfacing and otherwise improving certain streets in the Village.

“Ten-mill Limitation” means the “ten-mill limitation” defined in Section 5705.02, Ohio Revised Code.

“Term Bonds” means the Various Purpose Bonds designated as Term Bonds in the Certificate of Award and maturing on the dates set forth in the Certificate of Award, and subject to Mandatory Sinking Fund Redemption.

“Various Purpose Bonds” means the Various Purpose Bonds, Series 2017, authorized in Section 3 of this ordinance.

“Water Project” means paying the costs improving the water system, installing water service connections and necessary appurtenances thereto.

Section 2. Findings and Determinations. This Council makes the following findings and determinations:

(a) It is necessary for the Village to issue the Various Purpose Bonds in one or more series for the purpose of (1) retiring the Outstanding Notes previously issued by the Village to pay the costs of the Project, and (2) paying Financing Costs of the Various Purpose Bonds. The issuance of the Various Purpose Bonds for these purposes is in the best interest of the Village.

(b) The Fiscal Officer has certified to this Council the maximum maturities of the Various Purpose Bonds in accordance with Section 133.14(C), Ohio Revised Code.

(c) All acts and conditions necessary to be performed by the Village or to have been met for the issuance of the Various Purpose Bonds in order to make them legal, valid, and binding general obligations of the Village, have been performed and met, or will have been performed and met, at the time of delivery of the Various Purpose Bonds, as required by law.

(d) No statutory or constitutional limitation of indebtedness or taxation will be exceeded by the issuance of the Various Purpose Bonds.

(e) All formal actions of this Council relating to the enactment of this ordinance were taken in an open meeting of this Council, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with the law.

Section 3. Terms of the Bonds. The Various Purpose Bonds will have the following terms:

(a) Amount. The Various Purpose Bonds will be issued in the maximum Original Principal Amount of \$3,585,000. The principal amounts of the Various Purpose Bonds to be issued as Current Interest Bonds, as Capital Appreciation Bonds, as Capital Appreciation Bonds that convert at some future date to Current Interest Bonds, as Serial Bonds, and as Term Bonds will be determined by the Fiscal Officer in the Certificate of Award.

(b) Date. The Current Interest Bonds will be dated the Closing Date, or any other date, not more than 45 days before the Closing Date, as determined by the Fiscal Officer in the Certificate of Award. The Capital Appreciation Bonds will be dated the Closing Date.

(c) Maturity. The Various Purpose Bonds will mature or be payable by Mandatory Sinking Fund Redemption in the amounts and on the Principal Payment Dates as follows:

<u>Year</u>	<u>Principal</u>	<u>Year</u>	<u>Principal</u>
1	\$170,000	16	\$90,000
2	170,000	17	90,000
3	170,000	18	90,000
4	170,000	19	90,000
5	170,000	20	90,000
6	170,000	21	90,000
7	170,000	22	90,000
8	170,000	23	90,000
9	170,000	24	90,000
10	145,000	25	90,000

11	145,000	26	60,000
12	145,000	27	60,000
13	140,000	28	60,000
14	140,000	29	60,000
15	140,000	30	60,000

The Fiscal Officer may adjust the principal payment schedule shown above, by (1) increasing or decreasing the principal amounts of the Various Purpose Bonds maturing or payable by Mandatory Sinking Fund Redemption on any one or more of the Principal Payment Dates, or (2) by shortening the schedule so that the Various Purpose Bonds will mature over a lesser number of years. The Fiscal Officer must set forth any adjustment of the principal payment schedule in the Certificate of Award.

(d) Redemption Before Stated Maturity. The Various Purpose Bonds will be subject to redemption before their stated maturity as described in this Section 3(d), unless otherwise determined by the Fiscal Officer in the Certificate of Award.

(1) Mandatory Sinking Fund Redemption. If any of the Various Purpose Bonds are issued as Term Bonds, the Term Bonds will be subject to Mandatory Sinking Fund Redemption, in part, on the Mandatory Redemption Dates, at a redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date. The principal amounts to be paid by Mandatory Sinking Fund Redemption will be those in the principal payment schedule in Section 3(c) above, unless otherwise determined in the Certificate of Award.

The Village will have the option to deliver Term Bonds in any principal amount to the Registrar for cancellation. The Village will be entitled to a credit against its obligation to pay Debt Service by Mandatory Sinking Fund Redemption on any future Mandatory Redemption Date for Term Bonds that (A) are delivered by the Village to the Registrar, (B) have previously been redeemed other than by Mandatory Sinking Fund Redemption, or (C) have been purchased and canceled by the Registrar as provided in the Registrar Agreement.

(2) Optional Redemption. Unless otherwise determined by the Fiscal Officer in the Certificate of Award, the Various Purpose Bonds maturing on or after December 1, 2027 will be subject to redemption, at the option of the Village, on or after December 1, 2026, in whole or in part on any date, in whole multiples of \$5,000, at the redemption price of 100% of the principal amount being redeemed, plus interest accrued to the redemption date.

The Fiscal Officer may determine to change the optional redemption provisions relating to the Various Purpose Bonds set forth above by (A) changing the earliest optional redemption date, which may be any date before the final maturity of the Various Purpose Bonds, and (B) changing the redemption prices for the Various Purpose Bonds, which may not exceed 110% in any year in which the Various Purpose Bonds are subject to optional redemption. The Fiscal Officer

must set forth any change to the optional redemption provisions in the Certificate of Award.

The Village's option to redeem the Various Purpose Bonds must be exercised by a notice from the Fiscal Officer to the Registrar as provided in the Registrar Agreement.

(3) Terms of Redemption. The procedures for partial redemption, for notice of redemption, and for payment of redeemed Various Purpose Bonds must be set forth in the Registrar Agreement.

(e) Interest Rates. The Various Purpose Bonds will bear interest at the rate or rates determined in the Certificate of Award. The weighted average of the rates of interest on the Various Purpose Bonds, determined by taking into account the principal amounts of the Various Purpose Bonds and the terms to maturity or Mandatory Redemption Dates of those principal amounts, may not exceed 6% per annum. Interest will be calculated on a 360-day year of twelve 30-day months.

(1) Current Interest Bonds. Current Interest Bonds will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date. Interest on the Current Interest Bonds will be payable on the Interest Payment Dates until the principal amount has been paid or provided for.

(2) Capital Appreciation Bonds. Any Capital Appreciation Bonds will bear interest from their date. The rate of interest on a Capital Appreciation Bond must be a rate that will result in a Maturity Amount for that Capital Appreciation Bond, payable at maturity, as determined by the Fiscal Officer in the Certificate of Award. Interest on a Capital Appreciation Bond will be accrued and compounded on each Interest Payment Date, and will be payable at maturity. All Capital Appreciation Bonds with the same stated maturity must bear interest at the same compounding rate. The total interest accrued on any Capital Appreciation Bond as of any date will be an amount equal to the amount by which the Compound Accreted Amount of that Capital Appreciation Bond exceeds the Original Principal Amount of that Capital Appreciation Bond as of that date. The Compound Accreted Amounts of the Capital Appreciation Bonds as of the Interest Payment Dates must be set forth in the Certificate of Award. The Compound Accreted Amount of a Capital Appreciation Bond as of any date other than an Interest Payment Date will be calculated in the manner described in the definition of "Compound Accreted Interest" in Section 1.

(f) Form, Numbering, and Denominations. The Various Purpose Bonds must be issued in fully registered form. They must be issued in Authorized Denominations and in such numbers as requested by the Original Purchaser and approved by the Fiscal Officer. They must be numbered as determined by the Registrar. They must express on their faces the purpose for which they are issued and that they are issued in accordance

with this ordinance. The Various Purpose Bonds will be designated “Various Purpose Bonds, Series 2017” unless otherwise designated in the Certificate of Award.

Section 4. Payment. The Debt Service on the Various Purpose Bonds will be payable in lawful money of the United States of America without deduction for the services of the Registrar as paying agent. Principal and any premium on the Various Purpose Bonds will be payable when due upon presentation and surrender of the Various Purpose Bonds at the office of the Registrar. Interest on the Current Interest Bonds will be paid on each Interest Payment Date by check or draft mailed on the Interest Payment Date to the Holder as shown on the Register at the close of business on the 15th day of the month preceding the Interest Payment Date. Interest on the Capital Appreciation Bonds will be payable at maturity, in accordance with Section 3(e)(2) of this ordinance. Notwithstanding the foregoing, so long as the Various Purpose Bonds are issued in book-entry form in a book-entry system, Debt Service on the Various Purpose Bonds will be payable as provided in any agreement entered into by the Village in connection with the book-entry system. Payment of Debt Service on any Various Purpose Bond will be made only to or upon the order of the Holder. All such payments will be valid and effectual to satisfy and discharge the Village’s liability upon that Various Purpose Bond to the extent of the amount or amounts so paid.

Section 5. Signing and Authentication.

(a) **Signing.** The Various Purpose Bonds shall be signed on behalf of the Village by the Mayor and the Fiscal Officer. Both signatures on the Various Purpose Bonds may be facsimiles.

(b) **Authentication.** No Various Purpose Bond will be valid or obligatory for any purpose or will be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the bond certificate is signed by the Registrar as authenticating agent. Authentication by the Registrar will be conclusive evidence that the Various Purpose Bond so authenticated has been duly issued, signed, and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Registrar or by any other person acting as an agent of the 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 Various Purpose Bonds.

Section 6. Registration, Transfer, and Exchange; Book-Entry System.

(a) **Registration.** So long as any of the Various Purpose Bonds remain outstanding, the Village shall cause the Registrar to maintain the Register. The person in whose name a Various Purpose Bond is registered on the Register will be regarded as the absolute owner of that Various Purpose Bond for all purposes of the Bond Proceedings. Neither the Village nor the Registrar will be affected by any notice to the contrary, but the registration may be changed as provided in this Section and in the Registrar Agreement.

(b) Transfer and Exchange. Any Various Purpose Bond may be exchanged for Various Purpose Bonds of any Authorized Denomination, as provided in the Registrar Agreement.

All Various Purpose Bonds issued and authenticated upon any exchange or transfer will be valid obligations of the Village, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Various Purpose Bonds surrendered upon that exchange or transfer.

(c) Book-Entry System. The Various Purpose Bonds shall be originally issued in book-entry form to a Depository, initially The Depository Trust Company, for use in a book-entry system upon the terms provided in the Registrar Agreement. Under the book-entry system, the Various Purpose Bonds will be registered in the name of a Depository or its nominee, the bond certificates in fully-registered form will be deposited with and retained in the custody of the Depository or its agent, and the ownership of interests in the Various Purpose Bonds may be transferred only through a book entry on the records of the Depository.

Subject to the provisions of this ordinance relating to the Village's Continuing Disclosure Agreement, the Village and the Registrar shall recognize and treat the Depository as the Holder of the Various Purpose Bonds for all purposes, including payment of Debt Service, redemption and other notices, and enforcement of remedies.

If any Depository determines not to continue to act as a Depository for the Various Purpose Bonds in a book-entry system or if the Village determines to discontinue the 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 do so, the Fiscal Officer must direct the Registrar to make provision for notification of the book-entry interest owners by the Depository and to make any other arrangements necessary for the withdrawal of the Various Purpose Bonds from the book-entry system.

If the Various Purpose Bonds are sold in a private placement and not in book-entry form, the Village, if requested by a Holder of the Various Purpose Bonds, will complete the necessary procedures to qualify the Various Purpose Bonds as book-entry bonds.

Section 7. Sale of the Various Purpose Bonds.

(a) Private Sale. This Council authorizes the Fiscal Officer to sell the Various Purpose Bonds in a private sale to the Original Purchaser. The purchase price of the Various Purpose Bonds shall not be less than 97% of the aggregate principal amount of the Various Purpose Bonds, plus any accrued interest on the Various Purpose Bonds from their date to the Closing Date. The Fiscal Officer may either sell the Various Purpose Bonds to an investment bank, acting as underwriter, or to a financial institution or other entity or person in a private placement. If the Fiscal Officer sells the Various Purpose Bonds in a private placement, this Council authorizes the Fiscal Officer to select a

placement agent for that private placement. The Fiscal Officer may enter into a Purchase Agreement with the Original Purchaser in that private sale, or may sell the Various Purpose Bonds without a Purchase Agreement. The Fiscal Officer may sell the Various Purpose Bonds at the same time, in the same manner, and in the same offering with other securities of the Village, whether or not those other securities have been consolidated with the Various Purpose Bonds in accordance with (b) below.

(b) Consolidation. If the Fiscal Officer determines it to be in the best interest of the Village, she may combine the Various Purpose Bonds with one or more other general obligation bonds of the Village, payable from taxes subject to the Ten-Mill Limitation

(c) Certificate of Award. The Fiscal Officer shall deliver a Certificate of Award to the Original Purchaser in connection with the sale of the Various Purpose Bonds. The Fiscal Officer shall state the following in the Certificate of Award: the principal amounts to be issued as Current Interest Bonds, Capital Appreciation Bonds, convertible Capital Appreciation Bonds, Serial Bonds, and Term Bonds; the interest rates on the Various Purpose Bonds; the first Interest Payment Date of the Various Purpose Bonds; the purchase price for the Various Purpose Bonds; the designated Registrar; the Original Purchaser; whether the Various Purpose Bonds will be issued as Various Purpose Bonds or Taxable Bonds, or a combination of both, and the principal amounts thereof; and any other terms required by this ordinance. The Fiscal Officer may state the following in the Certificate of Award: any changes in the date, the maturity date, the redemption provisions, and the designation of the Various Purpose Bonds; whether the Various Purpose Bonds are to be consolidated with other bond issues; and any other terms authorized by this ordinance, subject to the limitations stated in this ordinance.

(d) Delivery. The Fiscal Officer shall cause the Various Purpose Bonds to be prepared, signed, and delivered to the Original Purchaser. This Council authorizes the Fiscal Officer, as Clerk of Council, to deliver a true transcript of proceedings for the issuance of the Various Purpose Bonds to the Original Purchaser upon payment of the purchase price. This Council authorizes the Fiscal Officer to include in the transcript, a statement of the indebtedness of the Village and the other information required by Section 133.33, Revised Code.

Section 8. Disclosure.

(a) Primary Offering Disclosure - Official Statement. This Council authorizes the Mayor and the Fiscal Officer, or either of them, if they determine it to be necessary in connection with the sale of the Various Purpose Bonds, to (1) prepare or cause to be prepared, and to make or authorize modifications, completions, or changes of or supplements to, a disclosure document in the form of an official statement, (2) determine, and certify or otherwise represent, when the official statement is to be “deemed final” (except for permitted omissions) or is a final official statement for purposes of the SEC Rule, (3) use and distribute, or authorize the use and distribution of, that official statement and any supplements in connection with the original issuance of the Various Purpose Bonds, and (4) complete and sign the final official statement together with

certificates, statements, or other documents in connection with the finality, accuracy, and completeness of that official statement.

(b) Secondary Market Disclosure - Continuing Disclosure Agreement. For the benefit of the Holders of the Various Purpose Bonds and the beneficial owners of book-entry interests in the Various Purpose Bonds, the Village agrees, as the only obligated person with respect to the Various Purpose Bonds under the SEC Rule, to provide financial information and operating data, financial statements, and notices, in the manner required for purposes of paragraph (b)(5)(i) of the SEC Rule. The covenants in the Continuing Disclosure Agreement will be effective only if the Fiscal Officer determines to sell the Various Purpose Bonds in a sale that is not exempt from the SEC Rule.

(1) Information Filing. The Village further agrees, in particular, to provide:

(A) to the MSRB through its EMMA System, in an electronic format as prescribed by the MSRB and containing such identifying information as prescribed by the MSRB (1) Annual Information for each Village fiscal year, not later than the end of the ninth month following the end of the fiscal year, and (2) when and if available, audited Village financial statements for each of those fiscal years;

(B) to the MSRB through its EMMA System, in an electronic format as prescribed by the MSRB and containing such identifying information as prescribed by the MSRB in a timely manner, notice of (1) any Specified Event, within 10 business days of the occurrence of the Specified Event, (2) the Village's failure to provide the Annual Information within the time specified above, (3) any change in the accounting principles applied in the preparation of its annual financial statements, (4) any change in its fiscal year, (5) its failure to appropriate funds to meet costs to be incurred to perform the Continuing Disclosure Agreement, and (6) the termination of the Continuing Disclosure Agreement.

(2) Continuing Disclosure Certificate. To further describe and specify certain terms of the Continuing Disclosure Agreement, this Council authorizes the Fiscal Officer (A) to complete, sign, and deliver the Continuing Disclosure Certificate, in the name and on behalf of the Village, and (B) to specify in reasonable detail the Annual Information to be provided (which may be provided by specific reference to other documents previously filed and available in accordance with the SEC Rule), and the Village's expectations as to whether audited financial statements will be prepared, the accounting principles to be applied in their preparation, and whether they will be available together with, or separately from, the Annual Information.

(3) Disclosure Procedures. This Council further authorizes the Fiscal Officer to establish procedures to ensure compliance by the Village with the Continuing Disclosure Agreement, including timely provision of information and notices as described above. Before making any filing in accordance with (b)(2) above or providing notice of the occurrence of any other events, the Fiscal Officer may consult with and obtain legal advice from bond counsel or other qualified independent special counsel selected by the Village. The Fiscal Officer, acting in the name and on behalf of the Village, may rely upon that legal advice in determining whether a filing should be made.

(4) Amendments. The Village reserves the right to amend the Continuing Disclosure Agreement, and to obtain the waiver of noncompliance with any provision of the Continuing Disclosure Agreement, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency, or formal defect or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the Village, or type of business conducted by the Village. Any amendment or waiver will not be effective unless the Continuing Disclosure Agreement (as amended or taking into account that waiver) would have complied with the requirements of the SEC Rule at the time of the primary offering of the Various Purpose Bonds, after taking into account any applicable amendments to or official interpretations of the SEC Rule, as well as any change in circumstances, and until the Village has received either (A) a written opinion of bond counsel or other qualified independent special counsel selected by the Village that the amendment or waiver would not materially impair the interests of Holders or beneficial owners of book-entry interests in the Various Purpose Bonds, or (B) the written consent to the amendment or waiver by the Holders of at least a majority of the principal amount of the Various Purpose Bonds then outstanding. Annual Information containing any revised operating data or financial information must explain, in narrative form, the reasons for any amendment or waiver and the impact of the change on the type of operating data or financial information being provided.

(5) Enforcement. The Continuing Disclosure Agreement will be solely for the benefit of the Holders of, and beneficial owners of book-entry interests in, the Various Purpose Bonds. The exclusive remedy for any breach of the Continuing Disclosure Agreement by the Village will be limited, to the extent permitted by law, to a right of Holders and beneficial owners to institute and maintain legal proceedings to obtain the specific performance by the Village of its obligations under the Continuing Disclosure Agreement. Any individual Holder or beneficial owner may institute and maintain those proceedings to require the Village to provide a filing if the filing is due and has not been made. Any proceedings to require the Village to perform any other obligation under the Continuing Disclosure Agreement (including any proceedings that contest the sufficiency of any filing) may be instituted and maintained only (A) by a trustee appointed by the Holders and beneficial owners of not less than 25% in principal amount of the Various Purpose Bonds then outstanding, or (B) by Holders and

beneficial owners of not less than 10% in principal amount of the Various Purpose Bonds then outstanding, in accordance with Section 133.25(B)(4)(b) or (C)(1), Revised Code, as applicable, or any comparable successor provisions.

(6) Appropriation. The performance by the Village of the Continuing Disclosure Agreement will be subject to the annual appropriation of any funds that may be necessary to perform it.

(7) Term. The Continuing Disclosure Agreement will remain in effect only for the period that the Various Purpose Bonds are outstanding in accordance with their terms and the Village remains an obligated person with respect to the Various Purpose Bonds within the meaning of the SEC Rule. The obligation of the Village to provide the Annual Information, audited financial statements, and notices of the events described above will terminate if and when the Village is no longer an obligated person with respect to the Various Purpose Bonds.

Section 9. Financing Costs. The Village retains the professional services and authorizes the payment of the Financing Costs for the Various Purpose Bonds, as provided in this Section 9.

(a) Bond Counsel. The Village retains the legal services of Roetzel & Andress, A Legal Professional Association, as bond counsel for the Various Purpose Bonds. The legal services will 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 Various Purpose Bonds and rendering legal opinions upon the delivery of the Various Purpose Bonds. Bond counsel must render those services to the Village in an attorney-client relationship. Bond counsel must be paid just and reasonable compensation for those legal services.

(b) Original Purchaser. This Council authorizes the Fiscal Officer to select the Original Purchaser of the Various Purpose Bonds in the Certificate of Award. The Original Purchaser will be paid for services in accordance with any Purchase Agreement or, if there is no Purchase Agreement, in accordance with its proposal as accepted by the Fiscal Officer in the Certificate of Award.

(c) Issuer's Counsel. The Village retains the legal services of DiCaudo, Pitchford & Yoder LLC as issuer's counsel the Bonds. The legal services will be in the nature of legal advice and recommendations as to the documents in connection with the issuance and sale of the Bonds. Issuer's counsel must render those services to the Village in an attorney-client relationship. Issuer's counsel must be paid just and reasonable compensation for those legal services.

(d) Ratings and Insurance. If, in the judgment of the Fiscal Officer, the filing of an application for (1) a rating on the Various Purpose Bonds by one or more nationally recognized statistical rating organizations, or (2) a policy of insurance or other credit enhancement to better assure the payment of Debt Service on the Various Purpose Bonds, is in the best interest of and financially advantageous to the Village, this Council

authorizes the Fiscal Officer to prepare and submit those applications and to provide to those rating agencies or insurance providers the information required for the purpose. This Council further authorizes the fees for those ratings and the premiums for the insurance to be included in Financing Costs authorized under (h) below.

(e) Registrar. This Council authorizes the Fiscal Officer to appoint a Registrar for the Various Purpose Bonds. The Registrar must be a financial institution able to complete transfer and exchange functions for the Bonds in accordance with standards and conditions applicable to registered corporate securities. The Village retains the services of the Registrar for the Various Purpose Bonds. The Registrar will perform the services as bond registrar, authenticating agent, paying agent, and transfer agent for the Various Purpose Bonds as provided in this ordinance. The Registrar will be paid for those services in accordance with the Registrar Agreement.

(f) Municipal Advisor. This Council retains the services of H.J. Umbaugh & Associates, as Municipal Advisor for the Various Purpose Bonds. The Municipal Advisor will be paid for those services in accordance with its letter of engagement. This Council authorizes the fees for the Municipal Advisor's services to be included in the Financing Costs authorized under (h) below.

(g) Limits on Authority of Service Providers. In rendering the services described above, as independent contractors, those service providers must not exercise any administrative discretion on behalf of the Village in the formulation of public policy; expenditure of public funds; enforcement of laws, and regulations of the State, the Village, or any other political subdivision; or the execution of public trusts.

(h) Payment of Financing Costs. This Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the issuance and sale of the Various Purpose Bonds. Those Financing Costs may be paid by the Original Purchaser in accordance with any Purchase Agreement. To the extent they are not paid by the Original Purchaser, this Council authorizes the Fiscal Officer to provide for the payment of those Financing Costs from the proceeds of the Various Purpose Bonds to the extent available and, otherwise, from any other funds lawfully available and appropriated for the purpose.

Section 10. Use of Proceeds. This Council appropriates those proceeds for the following purposes, and those proceeds must be used for those purposes.

(a) Any accrued interest or premium received on the sale of the Various Purpose Bonds must be deposited in the Bond Retirement Fund of the Village and used for the payment of interest on the Various Purpose Bonds on the first Interest Payment Date.

(b) An amount necessary to pay the Financing Costs of the Various Purpose Bonds, to the extent not paid by the Original Purchaser in accordance with any Purchase Agreement and to the extent that the Fiscal Officer determines to pay those Financing

Costs from the proceeds of the Various Purpose Bonds, must be deposited in a separate fund and used for the payment of those Financing Costs.

(c) The remainder of the proceeds must be deposited into the proper fund or funds and used for the payment of the costs of the Project.

Section 11. Security and Source of Payment. The Various Purpose Bonds will be general obligations of the Village.

(a) This Council pledges to the payment of Debt Service on the Various Purpose Bonds the full faith and credit of the Village including, without limitation:

(1) The general taxing power of the Village, including the power to levy taxes within the Ten-mill Limitation.

(2) Any money remaining from the sale of the Various Purpose Bonds after the payment of accrued interest or premium and the Financing Costs of the Various Purpose Bonds.

(b) The Debt Service on the Various Purpose Bonds must be paid at their maturity from any of the amounts set forth above pledged to their payment, or any funds of the Village otherwise available for their payment.

(c) During the years while the Various Purpose Bonds are outstanding, there will be levied on all the taxable property in the Village, in addition to all other taxes, a direct tax annually, subject to the Ten-mill Limitation, in an amount sufficient to pay Debt Service Charges on the Various Purpose Bonds when due. The tax will be not less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax must be and is ordered to be computed, certified, levied, and extended upon the tax list 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 computed, certified, levied, extended, and collected. The tax must be placed before and in preference to all other items and for its full amount. The money derived from that tax levy must be placed in the Bond Retirement Fund of the Village and is irrevocably pledged for the payment of the Debt Service Charges on the Various Purpose Bonds, when and as that Debt Service Charges falls due. In each year to the extent proceeds from the Village's municipal income tax are available for the payment of Debt Service Charges on the Various Purpose Bonds and are appropriated for the purpose, the amount of the tax shall be reduced by the amount of the income so available and appropriated. The Village hereby covenants that it will appropriate annually from municipal income taxes, and shall continue to levy and collect those municipal income taxes, in the amounts required to pay the principal of and interest on the Various Purpose Bonds when and as the same shall fall due. Additionally, if any of the following amounts are available for the payment of the Bonds and are appropriated for that purpose, the amount of the tax levy in each year must be reduced by the amount available and appropriated:

(1) Any surplus in the Bond Retirement Fund.

(2) Proceeds received from the sale of any bonds issued to refund the Various Purpose Bonds.

(3) Any other money lawfully available to the Village.

Section 12. Federal Tax Matters. This Council authorizes and directs the Fiscal Officer to determine in the Certificate of Award whether to issue the Various Purpose Bonds as Various Purpose Bonds, Taxable Bonds or a combination of those types of Bonds. The Village covenants that it will take those actions required to maintain the Federal Tax Status of the Various Purpose Bonds and that it will not take or permit to be taken any actions that would adversely affect that Federal Tax Status of the Various Purpose Bonds. Without limiting these covenants, the Village specifically covenants as follows:

(a) Private Activity Bonds. The Village will apply the proceeds received from the sale of the Various Purpose Bonds to those uses described in Section 10. The Village will not will not secure or derive the money for payment of Debt Service on the Various Purpose Bonds by any property or payments, and will not loan the proceeds of the Various Purpose Bonds to any person, all in a manner as to cause the Various Purpose Bonds to be “private activity bonds” within the meaning of Code Section 141(a).

(b) Arbitrage. The Village will restrict the use of proceeds of the Various Purpose Bonds in the manner and to the extent as may be necessary, after taking into account reasonable expectations at the time of the delivery of and payment for Various Purpose Bonds, so that the Various Purpose Bonds will not constitute “arbitrage bonds” within the meaning of Code Section 148. The Fiscal Officer or any other official having responsibility for issuing the Various Purpose Bonds, is authorized and directed, alone or in conjunction with any other officer, employee, or consultant of the Village, to sign and deliver a certificate of the Village, for inclusion in the transcript of proceedings for the Various Purpose Bonds, setting forth the reasonable expectations of the Village on the Closing Date, regarding the amount and use of the proceeds of the Various Purpose Bonds in accordance with Code Section 148. If required, the Village will limit the yield on any “investment property” (as defined in Code Section 148(b)(2)) acquired with the proceeds of the Various Purpose Bonds.

(c) Arbitrage Rebate. Unless the gross proceeds of the Various Purpose Bonds are expended in accordance with the spending period exceptions set forth in Treas. Reg. §1.148-9, the Village will pay the amounts required by Code Section 148(f)(2) to the United States at the times required by Code Section 148(f)(3). The Village will maintain the books and records and make the calculations and reports that are required to comply with the Code’s arbitrage rebate requirements.

(d) Federal Guarantee. The Village will make loans of the proceeds of the Various Purpose Bonds, or invest the proceeds of Various Purpose Bonds in a manner as to cause the Various Purpose Bonds to be “federally guaranteed” within the meaning of Code Section 149(b).

(e) Information Reporting. This Council authorizes the Fiscal Officer or any other official of the Village having responsibility for issuing the Various Purpose Bonds to sign and file a Form 8038-G for the Various Purpose Bonds with the Internal Revenue Service.

Section 13. Signing and Delivery of Various Purpose Bonds and Documents. This Council authorizes the Mayor and the Fiscal Officer to sign and deliver the Various Purpose Bonds in accordance with Section 5 of this ordinance. This Council authorizes the Mayor and the Fiscal Officer, or either of them, to sign and approve a preliminary official statement, a final official statement, and supplements and amendments to both in accordance with Section 8 of this ordinance.

(a) This Council authorizes the Fiscal Officer to sign and deliver, on behalf of the Village:

(1) The Certificate of Award.

(2) Any Purchase Agreement.

(3) The Registrar Agreement.

(4) The Continuing Disclosure Certificate.

(5) Any agreements or letters of representation in connection with a book-entry system for the Various Purpose Bonds.

(6) Applications for and agreements in connection with obtaining a policy of municipal bond insurance for the Various Purpose Bonds.

(7) Applications for and agreements in connection with obtaining one or more ratings for the Various Purpose Bonds.

(b) This Council authorizes the Fiscal Officer to sign and deliver, on behalf of the Village, in her capacity as fiscal officer of the Village:

(1) Any certificates required under Section 5705.41, Revised Code, for any of the agreements in connection with the Various Purpose Bonds.

(2) The statements of indebtedness provided for in Section 133.33(B), Revised Code.

In the absence of the Fiscal Officer, this Council authorizes the Treasurer to sign and deliver any of those documents and certificates.

(c) This Council authorizes the Mayor, the Solicitor, the Fiscal Officer the President of Council, and any other Village officials:


(1) to sign and deliver any certificates, instruments, and other documents that the official considers necessary or appropriate in connection with the issuance and sale of the Various Purpose Bonds and that are not inconsistent with this ordinance; and

(2) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this ordinance.

Section 14. Certification to County Fiscal Officer. This Council directs the Fiscal Officer or the Clerk of this Council to forward a certified copy of this ordinance and a copy of the Certificate of Award to the County Fiscal Officer.

Section 15. Emergency and Effective Date. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare, and safety of the Village and for the further reason that the Various Purpose Bonds must be sold promptly in order to pay the costs of the Project; wherefore, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest period allowed by law.

PASSED:



BILL GONCY, Mayor

ATTEST:



BETTY KLINGENBERG, FISCAL OFFICER

I, BETTY KLINGENBERG, Fiscal Officer and Clerk of the Village of Boston Heights, Summit County, Ohio do hereby certify that the foregoing **Ordinance 2017-4-11** was duly passed by the Council of the Village of Boston Heights, County of Summit, State of Ohio at a meeting of Council on this **11th day of April, 2017.**