

## RESOLUTION AUTHORIZING RESTATEMENT OF 2013 EMERGENCY LOAN NOTE

Muskegon Heights Public Schools, Muskegon County, Michigan

A regular board meeting of the board of education of the school district (the "School Board") was held in the Board of Education, within the boundaries of the school district, on the 2nd day of October, 2017, at 6 o'clock in the p.m.

The meeting was called to order by Trinell Scott, President.

Present: Members Trinell Scott, Peggy Selmon, Marjorie Cook and Mark Glover

Absent: Members Franklin Brewer, Marianne Darnell, Estelita Rankin

The following preamble and resolution were offered by Member Mark Glover and supported by Member Marjorie Cook:

### WHEREAS:

1. The Muskegon Heights Public Schools, Muskegon County, Michigan ("School District") is a general powers school district under the Revised School Code, 1976 PA 451, MCL 380.1, *et seq.*, as amended ("Act 451"), and has the powers conferred upon the School District by Act 451, the State Constitution of 1963 ("Constitution"), and other applicable law; and

2. The Emergency Municipal Loan Act, 1980 PA 243, MCL 141.931, *et seq.*, as amended ("Act 243"), authorizes municipalities, including school districts, to borrow money and the State of Michigan ("State") to issue debt and securities as emergency loans, as well as to renegotiate terms and restructure payments of outstanding loans; and

3. The School District is a municipality under Act 243 with the power to borrow money and issue evidences of indebtedness for repayment of obligations, including, but not limited to, money advanced or previously advanced and approved or previously approved for advancement under The School Aid Act of 1979, 1979 PA 94, MCL 388.1601, *et seq.*, as amended ("Act 94"), or money borrowed under Section 1225 of Act 451; and

4. The Revised Municipal Finance Act, 2001 PA 34, MCL 141.2101, *et seq.*, as amended ("Act 34"), authorizes the borrowing of money and the issuance of certain debt and securities, provides for tax levies, authorizes the issuance of debt and securities, and generally governs municipal finance practices in the State; and

5. The School District is a municipality under Act 34 with the power to issue securities such as bonds, notes, contracts, obligations or other similar instruments; and

6. Pursuant to Act 243, on January 18, 2013, the School District issued its Emergency Loan Note, 2012-13 Series II ("2013 Note") under the name of "School District of the City of Muskegon Heights," an assumed name under which the School District does business from time to time, and which note currently is outstanding and in full force and effect in accordance with its terms;

7. Act 243 empowers the Local Emergency Financial Assistance Loan Board ("ELB") to restructure payments, but not the outstanding principal balance or interest, on certain loans, including the loan evidence by the 2013 Note ("2013 Loan"), subject to conditions set forth in Act 243; and

8. As part of the financial and operating plan adopted for the School District, the School Board has determined that it is necessary and in the best interest of the School District to make application to the ELB to restructure the 2013 Loan as permitted by Act 243 (the "Restructuring"); and

9. The School Board has the power to exercise on behalf of the School District all authority and responsibilities affecting the School District that are prescribed by law; and

10. The School District is subject to a consent agreement under the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.*, and that loan authorization is necessary to implement a financial and operating plan under that act.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Superintendent of Schools (the "Superintendent") or the chief business official of the School District shall submit an application to the ELB requesting approval for the Restructuring of the 2013 Loan by the ELB as authorized by this resolution, which Restructuring shall be evidenced by an amended and restated note which shall be exchanged for the 2013 Note.

2. The President, Vice President, Secretary or Treasurer of the School Board and the Superintendent or chief business official, in consultation with the School District's Municipal Advisor, as defined herein, and any other official or employee of the School District or other individual authorized by the School Board (when applicable) to act on behalf of the School District for this purpose (each an "Authorized Officer") are authorized and ordered to take action, negotiate terms and execute documents and certificates as necessary or desirable and in the best interest of the School District in connection with the restructuring of the 2013 Loan by the School Board.

3. The Authorized Officer or her or his designee is hereby authorized to negotiate, approve and execute any additional agreement, instruments or other documents directly with the Michigan Department of Treasury, which are deemed necessary by the Authorized Officer, in order to satisfy any terms and conditions set forth by the ELB and the Michigan Department of Treasury.

4. An Authorized Officer, on behalf of the School District, shall execute any amended and restated 2013 Note, or a replacement for the 2013 Note, as may be necessary or desirable in order to accomplish the Restructuring of the 2013 Loan by the ELB. Restructured notes of the School District designated "Amended and Restated Emergency Loan Note (General Obligation - Limited Tax), 2012-13 Series II" (each a "Restructured Note"), shall be issued in one or more series in substantially the form attached hereto as Exhibit A to replace the 2013 Note, with sequential series references as determined by an Authorized Officer, each in an amount determined by an Authorized Officer, not to exceed the principal amount of the 2013 Loan, in the aggregate (each a "Restructured Loan" and collectively, the "Restructured Loans"). The Restructured Notes are issued on a *pari passu* basis with the prior emergency loan notes of the Issuer originally dated August 16, 2012 and April 28, 2014, and a new emergency loan expected to be issued in November 2017, maturing November 1, 2041 and April 30, 2044, and expected to mature on June 15, 2047, respectively, some or all of which themselves may be restructured. Each Restructured Note shall evidence the obligation of the School District to repay the applicable Restructured Loan to the State under Act 243. The

Restructured Note shall be delivered to the ELB as agent for the State in exchange for the School District's receipt of the referenced 2013 Note marked "CANCELED"; and the Authorized Officer is authorized and directed then to destroy such canceled note.

5. Each Restructured Note shall be dated as of the date of delivery of the Restructured Note to the State. Each Restructured Note shall bear interest from the date of delivery of the Restructured Note and shall be payable as to principal and interest on the dates and in the amounts, at the rates, and subject to redemption before maturity, as determined by an Authorized Officer; provided that the final maturity shall not be later than June 15, 2042, and the interest rates, or the maximum interest rate if issued on a variable rate basis, shall not exceed 2.35% per annum. Principal and interest on each Restructured Note shall be payable to the State Treasurer.

6. Each Restructured Note shall be a limited tax general obligation of the School District, and the full faith and credit of the School District shall be pledged to the payment of the principal of and interest on the Restructured Note as and when due. The Restructured Note shall be payable out of the general funds of the School District, including collection of ad valorem taxes the School District may levy on property within the geographic boundaries of the School District under Section 1211 of Act 451, within constitutional and statutory limitations. As additional security for the payments when due and owing under each Restructured Note, the School District pledges, and acknowledges the State's statutory right to withhold, the amount of all delinquent payments due on each Restructured Note from State money appropriated to the School District, including, but not limited to, money appropriated under Act 94, and authorizes the State to withhold the funds and apply the funds to the repayment of principal of or interest on any Restructured Note delinquent according to the terms of the Restructured Note.

7. An Authorized Officer shall execute each Restructured Note on behalf of the School District, and upon acknowledgment of receipt of the principal amount of the applicable Loan, the fully executed applicable Restructured Note shall be delivered to the ELB as agent for the State.

8. Each Restructured Note shall be in substantially the form attached to this resolution as Exhibit A with changes as approved by an Authorized Officer not inconsistent with the terms of this resolution.

9. The School District also acknowledges that there may be conditions of the Restructured Loan and agrees to comply with the requirements of the ELB's Order of Approval of Loan ("ELB Order") as approved by an Authorized Officer not inconsistent with this resolution. Once accepted, the terms and conditions of any associated ELB Order shall be binding on the School District.

10. This School Board hereby appoints Thrun Law Firm, P.C., as legal counsel for the purpose of issuing the Restructured Note and the Restructured Loan and acknowledges that said counsel has represented to the School Board that it does not represent any other party in this transaction associated with the issuance of the Restructured Note or the Restructured Loan; however, Thrun Law Firm, P.C. periodically represents certain agencies of the State of Michigan and other potential parties to this transaction in other matters unrelated to this transaction.

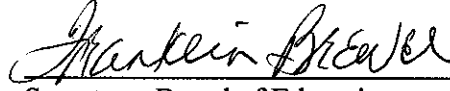
11. This School Board hereby appoints the firm of Robert W. Baird & Co. as Municipal Advisor for the purpose of issuing the Restructured Note and the Restructured Loan.

12. All resolutions and parts of resolutions conflicting with this resolution are rescinded.

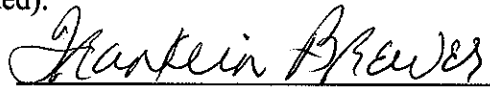
Ayes: Members 4

Nays: Members 0

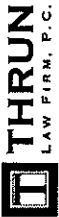
Resolution declared adopted.

  
Secretary, Board of Education

I, the undersigned, the duly qualified and acting Secretary of the Board of Education of Muskegon Heights Public Schools, Muskegon County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board at regular meeting held on October 2, 2017, the original of which is a part of the Board's minutes. The undersigned also certifies that notice of the meeting was given to the public pursuant to the "Open Meetings Act" (Act 267 Public Acts of Michigan, 1976, as amended).

  
Secretary, Board of Education

CJI/kmh



In addition, should the State Treasurer require the Issuer to enter into a Tax Intercept Agreement as described below, on each \_\_\_\_\_ commencing \_\_\_\_\_, 20\_\_\_\_, or on the next succeeding business day or such later date as described in the Tax Intercept Agreement, the Issuer shall have the obligation to prepay, without penalty or premium, an aggregate principal amount equal to the net amount on deposit in the Account (as defined in such Tax Intercept Agreement) as of the preceding business day, less an amount equal to the operating expenses retained by the Issuer as approved from time to time by the State Treasurer. Prepayments shall be credited to principal payments in inverse order of maturity.

This note and the interest hereon are payable, as a first budget obligation, from any funds of the Issuer available therefor including but not limited to any delinquent taxes payable to the Issuer from the County of Muskegon, State of Michigan's delinquent tax revolving fund, or from general ad valorem taxes imposed on all taxable property in the Issuer, and the Issuer is required, if necessary, to levy ad valorem taxes on all taxable property in the Issuer for the payment thereof, subject to applicable constitutional and statutory tax rate limitations.

The maturity of principal of and accrued and unpaid interest on this note may be accelerated by the State Treasurer on behalf of the State of Michigan upon the occurrence and during the continuance of any Event of Default under this note. Each of the following shall constitute an "Event of Default" under this note: (A) non-payment of any principal of or interest on this note, when due; and (B) failure of the Issuer to comply with the terms of paragraph 2 of the Funding Conditions Memorandum dated the date hereof between the Issuer and the State of Michigan.

The Issuer shall pledge to the State Treasurer a sufficient amount of the proceeds of the operating taxes levied for the Issuer and the delinquencies thereon that is necessary to pay the principal of and interest on this note, when due. At the sole discretion of and upon notice by the State Treasurer, the Issuer shall enter into a Tax Intercept Agreement with The Bank of New York Mellon Trust Company, N.A., located in Detroit, Michigan, as depository (the "*Depository*"), the City of Muskegon Heights (the "Local Government") and the County Treasurer of the County of Muskegon to provide for the payment to the Depository by such Local Government and County Treasurer of such operating taxes and the delinquencies thereon collected by them on behalf of the Issuer after the date of such agreement. As additional security for payment of this note and in the event of the delinquency of the Issuer in paying required principal of or interest on this note, the State Treasurer is authorized to intercept up to but not more than all delinquent amounts of principal and interest due on this note from state school aid payments to the Issuer otherwise required to be made to the Issuer pursuant to the provisions of the State School Aid Act, Act No. 94, Public Acts of 1979, as amended, and said intercepted state school aid payments shall be applied by the State Treasurer against said delinquent payments. The Issuer's pledge of the proceeds of operating taxes and state aid payments described in this paragraph shall be subordinate to all state aid notes and tax anticipation notes sold to the Michigan Finance Authority, regardless of the date of issue. However, this current pledge of operating taxes and state aid payments shall be senior to pledges for payment of state aid notes or lines of credit issued after the date of this note and sold to all other parties that are not the Michigan Finance Authority. This note is issued on a *pari passu* basis with the prior notes of the issuer originally dated August 16, 2012, April 28, 2014 and November \_\_, 2017, and maturing \_\_\_\_\_, April 30, 2044 and \_\_\_\_\_, respectively, whether in their original form or as restructure as provided under Act 243.

If required by the State Treasurer pursuant to the immediately preceding paragraph, the Issuer shall enter into a Depository Agreement related to the Tax Intercept Agreement with the Depository

to provide for the manner in which the revenue from taxes collected will be deposited for use to repay the principal and interest due on this note.

While this note is outstanding, the Issuer has the right to issue to one or more financial institutions or to the Michigan Finance Authority one or more tax anticipation notes pursuant to Act 34, Public Acts of Michigan, 2001, as amended, and additional notes only to the State of Michigan in order to obtain additional emergency loans for the purpose of enabling the Issuer to meet its financial obligations.

Except as state law may require, the limited tax, full faith, credit and resources of the Issuer are hereby pledged for the payment of the principal and interest on this note. This note is payable primarily from ad valorem taxes, which will be levied within the authorized constitutional and statutory tax limitations of the Issuer and an irrevocable appropriation of a sufficient amount of such taxes will be made each year as a first operating budget obligation for the payment of the principal of and interest on this note as due, subordinate to all first liens on said funds pledged for the payment of state aid notes or tax anticipation notes sold to the Michigan Finance Authority, further subordinate to any first liens on said funds pledged for the payment of state aid notes, lines of credit or tax anticipation notes issued prior to the date of this note and sold to parties other than the Michigan Finance Authority, and subordinate to any statutory obligation to set aside operating tax collections for any tax anticipation notes issued subsequent to this note. If taxes are insufficient to pay this note when due, the Issuer has pledged to use any and all other resources available for the payment of this note. The Issuer does not have the power to levy taxes for the payment of this note in excess of its constitutional or statutory tax rate limitations. The Issuer may issue additional bonds or notes of equal standing only upon the approval of the State Treasurer.

The Issuer covenants that it shall perform and meet all requirements imposed upon the Issuer as a result of receiving this loan pursuant to Act 243 until this note is paid in full.

The Issuer waives presentment, demand, notice of dishonor, protest and notice of non-payment with respect to this note.

It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this note, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the Issuer, including this note, does not exceed any constitutional or statutory debt limitation.

MUSKEGON HEIGHTS PUBLIC SCHOOLS  
COUNTY OF MUSKEGON  
STATE OF MICHIGAN

By \_\_\_\_\_

Its: \_\_\_\_\_