

## RESOLUTION AUTHORIZING 2017 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 and Estelita Rankin

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

### 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; 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. Act 451 allows school districts to levy taxes and Section 11a of Act 451 allows school districts to use the proceeds to repay an emergency loan under Act 243; and

7. 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

8. The School Board has determined that there exists or will exist a deficit in the School District's general fund for the 2017-2018 fiscal year; and

9. The School Board has submitted a five-year plan to balance future expenditures with anticipated revenues; and

10. 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 a new application to the Local Emergency Financial Assistance Loan Board ("ELB") to borrow an additional sum of not to exceed \$2,449,000, to be evidenced by new notes issued in one or more series; and

11. An additional emergency loan to the School District under Act 243 will enable the School Board to cause public educational services to continue to be provided to residents of the School District, allow for the repayment of existing School District debt obligations, and assure the fiscal accountability of the School District; and

12. Pursuant to Act 451, Act 243, and Act 34, the School District may borrow money for permitted purposes and may issue notes or other evidences of indebtedness; and

13. Under Act 451, Act 243, and Act 34, the School Board may approve the issuance of municipal securities to finance the deficit within the School District and pay necessary expenditures of the School District; and

14. Under Act 451, Act 243, Act 34, and Act 94, the School Board may authorize the issuance of municipal securities, the resolution may contain an irrevocable provision for the levying of a tax within the applicable authorized constitutional and statutory limitations in order to repay the municipal security from the receipt of the taxes, the resolution may contain an irrevocable provision authorizing the withholding of all delinquent payments due on each municipal security from State money appropriated to the School District, including, but not limited to, money appropriated under Act 94, and the funds may be applied to the repayment of principal of or interest on each municipal security; and

15. The School Board seeks to make certain determinations for, and on behalf of, and in the best interest of the School District in writing, to be filed and included with all other documentation of any emergency loan under Act 243; and

16. The School Board asserts that a proposed loan will assist the School District in resolving, at least partially, fiscal stress within the School District; and

17. The School District is in the process of making application to issue one or more tax anticipation notes authorized under Act 34; and

18. 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 individual acting in the capacity of chief school business official of the School District shall submit an application to the ELB requesting a loan in an amount not to exceed \$2,449,000, or such part of that amount authorized by the Michigan Department of Treasury, for which one or more notes of the School District shall be issued as evidence of the loan.

2. The President, Vice President, Secretary or Treasurer of the School Board and the Superintendent or chief business official, and any other official or employee of the School District or other individual authorized by the School Board (when applicable) (each an "Authorized Officer") are authorized and ordered to take action or execute documents and certificates as necessary or desirable and in the best interest of the School District in connection with the delivery of the notes authorized by this order and resolution and the School District's receipt of the proceeds of the loans authorized by this order and resolution.

3. Notes of the School District designated "Emergency Loan Note (General Obligation - Limited Tax), 2017-18 Series I" (each a "Note"), shall be issued in one or more series, with sequential series references as determined by an Authorized Officer, each in an amount determined by an Authorized Officer, not to exceed \$2,449,000, in the aggregate, not including any series issued prior to the date of this resolution (each a "Loan" and collectively, the "Loans"). The Notes are issued on a *pari passu* basis with the prior notes of the issuer dated August 16, 2012, January 18, 2013, and April 28, 2014, maturing November 1, 2041, November 1, 2041 and April 30, 2044, respectively, which prior notes may be restructured. Each Note shall evidence the obligation of the School District to repay the applicable Loan to the State under Act 243. Each Note shall be dated as of the date of delivery of the Note to the State. Each Note shall bear interest from the date of delivery of the 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 exceed 30 years from the applicable date of issuance, and the interest rates, or the maximum interest rate if issued on a variable rate basis, shall not exceed ten percent (10%). Principal and interest on each Note shall be payable to the State Treasurer.

4. Each 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 Note as and when due. The 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 Note, the School District pledges, and acknowledges the State's statutory right to withhold, the amount of all delinquent payments due on each 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 Note delinquent according to the terms of the Note.

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

6. Each 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.

7. The School District also acknowledges that there will be conditions of the 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 the ELB Order shall be binding on the School District.

8. The proceeds of each Loan shall be disbursed in accordance with a Use of Proceeds of Emergency Loan Table to be completed by an Authorized Officer at the time of issuance of the Loan.

9. This School Board hereby appoints Thrun Law Firm, P.C., as legal counsel for the purpose of issuing the Note and the 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 Note or the 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.

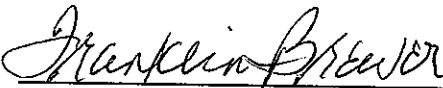
10. This School Board hereby appoints the firm of Robert W. Baird & Co. as Municipal Advisor for the purpose of issuing the Note and the Loan.

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

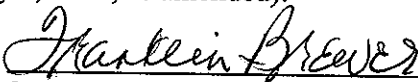
Ayes: Members 4

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 School Board at a regular meeting held on October 2, 2017, the original of which is a part of the School 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

EXHIBIT A

UNITED STATES OF AMERICA  
STATE OF MICHIGAN  
COUNTY OF MUSKEGON  
MUSKEGON HEIGHTS PUBLIC SCHOOLS

EMERGENCY LOAN NOTE  
(General Obligation - Limited Tax)  
2017-18 Series I

Registered Owner: State of Michigan  
Principal Amount: \$ \_\_\_\_\_  
Date of Original Issue: \_\_\_\_\_, 2017

The MUSKEGON HEIGHTS PUBLIC SCHOOLS, County of Muskegon, State of Michigan (the "Issuer"), acknowledges itself to owe and for value received hereby promises to pay to the State of Michigan the Principal Amount specified above, in lawful money of the United States of America, in \_\_\_ consecutive annual installments as set forth on the attached Exhibit A, incorporated herein by reference, unless modified by written agreement of the State Treasurer each on November 1 in each of the years 20\_\_ to 20\_\_, inclusive, unless prepaid in whole or in part prior thereto as hereinafter provided, with interest on the unpaid principal balance hereof from the Date of Original Issue specified above or such later date to which interest has been paid, until paid, at the rates per annum determined as set forth herein, payable first on \_\_\_\_\_ 1, 20\_\_ and semi-annually on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 thereafter. Both the principal of and interest on this note are payable at the Office of the State Treasurer in Lansing, Michigan, or such other place as may be designated in writing to the Issuer by the State Treasurer. In the event that an installment for the Principal Amount or interest due on \_\_\_\_\_ or \_\_\_\_\_ in any year falls on a Saturday, Sunday or any day in which banks in Michigan are generally not open, such payment shall be due on the next succeeding business day.

From the Date of Original Issue specified above, this note shall bear interest at the rate of \_\_\_% per annum. Interest on this note shall be computed on the basis of a 365- or 366-day year and the actual number of days elapsed.

This note is issued on the Date of Original Issue specified above in the name of the Issuer by the duly qualified and elected Board of Education of the Issuer under Act No. 243, Public Acts of 1980, as amended ("*Act 243*"), pursuant to a resolution approved by such Board of Education on \_\_\_\_\_, 2017, to evidence the obligation of the Issuer to repay an emergency loan made to it by the State of Michigan for the purpose of enabling the Issuer to meet its financial obligations.

The Issuer shall have the right to pay at any time or times prior to maturity, without penalty or premium, all or any portion of this note. Prepayments shall be credited to principal payments in direct order of maturity.

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 Berrien 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 dated August 16, 2012, January 18, 2013, and April 28, 2014, maturing November 1, 2041, November 1, 2041, and April 30, 2044, respectively, which prior notes may be restructured.

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

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: