

VILLAGE OF JOHNSTOWN, OHIO



ORDINANCE NO. 16-2015

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$1,450,000 OF BOND ANTICIPATION NOTES FOR THE PURPOSE OF PAYING PART OF THE COSTS OF CONSTRUCTING VARIOUS STREET AND SIDEWALK IMPROVEMENTS IN THE VILLAGE, AND MATTERS RELATED TO SUCH NOTES, AND DECLARING AN EMERGENCY.

WHEREAS, this Village Council of the Village of Johnstown, Ohio (the "Village") has heretofore determined the necessity of constructing various street and sidewalk improvements in the Village, including improvements to Bigelow Drive, Concord Road, South Kasson Street and Jersey Street (collectively, the "Project"); and

WHEREAS, the Director of Finance, as fiscal officer of the Village, has heretofore certified that the estimated life or period of usefulness of the improvements comprising the Project is at least five (5) years, and that the maximum maturity of bonds issued therefor is seventeen (17) years and of notes issued in anticipation of such bonds is twenty (20) years; and

WHEREAS, this Village Council expects the debt service charges on the notes authorized hereby to be paid from the proceeds of renewal notes or such bonds, and on such bonds, from the general revenues of the Village (the "Revenues");

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF JOHNSTOWN, OHIO, that:

SECTION 1. It is necessary to issue and sell general obligation bonds of the Village in the principal sum of not to exceed \$1,450,000 for the purpose of paying part of the costs of the Project in accordance with the provisions of Chapter 133 of the Ohio Revised Code (the "Act"). Such bonds shall be dated approximately September 1, 2016, shall bear interest at the rate of approximately six percent (6%) per annum and shall mature in substantially equal annual or semiannual installments of principal and interest over a period not exceeding seventeen (17) years after their issuance.

SECTION 2. It is hereby determined that notes (the "Notes") shall be issued in anticipation of such bonds pursuant to the Act. The Notes shall (i) be issued in one or more series in a principal amount as determined by any one of the Mayor, the Village Manager or the Director of Finance (each, an "Authorized Officer"), but not to exceed \$1,450,000 in aggregate

principal amount of all Notes, for the purpose aforesaid, (ii) be dated as determined by an Authorized Officer, (iii) be numbered from R-1 upwards in order of issuance, (iv) be of denominations as determined by the Authorized Officer (the "Authorized Denominations"), provided that each Note shall be of a single maturity, (v) mature on a date determined by an Authorized Officer, provided that such maturity date of each series of Notes shall be not later than one (1) year from the dated date of such series of the Notes, and (vi) bear interest payable at maturity at a rate per annum determined by the Authorized Officer, provided that the net interest cost payable by the Village over the life of the Notes shall not exceed four (4%) per annum. The determinations and designations to be made by an Authorized Officer pursuant to this ordinance for any series of the Notes shall be made without further action of this Village Council in a certificate of award (a "Certificate of Award") executed by an Authorized Officer and shall be conclusive.

Each series of the Notes shall be designated as determined by an Authorized Officer in the related Certificate of Award.

It is hereby determined by this Village Council that the issuance of the Notes provided herein is in the best interests of the Village.

SECTION 3. The Notes shall express upon their faces the purpose for which they are issued and that they are issued in pursuance of this ordinance. Each series of the Notes shall be in fully registered form without coupons, shall bear the signatures of any two of the Mayor, the Village Manager or the Director of Finance, provided that either or both such signatures may be facsimile signatures, and shall bear the manual authenticating signature of the Director of Finance or an authorized representative of a bank or trust company designated by the Director of Finance to serve as the paying agent, registrar and transfer agent (the "Paying Agent and Registrar") for the Notes. The principal amount of and interest on each Note shall be payable at maturity (each, a "Payment Date"), in lawful money of the United States of America and without deduction for exchange, collection or service charges, at the designated office of the Paying Agent and the Registrar to the person whose name appears on the record date (being the 15th day prior to the Payment Date) on the Note registration records as the registered holder thereof, by check or draft delivered to such registered holder upon the tender of the Notes for payment, or mailed to such registered holder at his address as it appears on such registration records.

The Notes shall be transferable by the registered holder thereof in person or by his attorney duly authorized in writing at the designated office of the Paying Agent and Registrar upon presentation and surrender thereof to the Paying Agent and Registrar. The Village and the Paying Agent and Registrar shall not be required to transfer any Note during the 15-day period preceding any Payment Date and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent and Registrar. Upon such transfer, a new Note or Notes of authorized denominations of the same maturity and for the same aggregate principal amount shall be issued to the transferee in exchange therefor.

The Village and the Paying Agent and Registrar may deem and treat the registered holders of the Notes as the absolute owners thereof for all purposes, and neither the Village nor the Paying Agent and Registrar shall be affected by any notice to the contrary.

SECTION 4. The Notes shall be the full general obligations of the Village, and the full faith, credit and revenue of the Village are hereby pledged for the prompt payment of the same. The principal amount received from the sale of renewal notes or the bonds anticipated by the Notes, and any excess fund resulting from the issue of the Notes, shall to the extent necessary be used only for the retirement of the Notes at maturity, together with interest thereon, and are hereby pledged for such purpose.

SECTION 5. During the period while the Notes run there shall be levied upon all of the taxable property in the Village within applicable limitations, in addition to all other taxes, a direct tax annually, not less than that which would have been levied if the bonds anticipated by the Notes had been issued without the prior issue of the Notes; said tax 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 said years are certified, extended and collected; provided, however, that in each year to the extent the Revenues or other moneys are available for the payment of such Notes and bonds and are appropriated for such purpose, the amount of such tax shall be reduced by the amount of the Revenues or other moneys so available and appropriated. Said tax shall be placed before and in preference to all other items and for the full amount thereof.

The Revenues to be applied to debt service on the Notes and the funds derived from said tax levies hereby required shall be placed in an appropriate fund as provided by law, which shall be irrevocably pledged for the payment of the interest on and the principal of the Notes, or the bonds in anticipation of which the Notes are issued, when and as the same shall fall due.

SECTION 6. Each series of the Notes shall be sold by negotiated sale as described herein for not less than 100% of the principal amount thereof, plus accrued interest to the date of delivery, to Ross, Sinclair & Associates, LLC (the "Purchaser"), upon terms within the limitations of this ordinance as determined by an Authorized Officer in the related Certificate of Award, such sale to be in accordance with the Purchaser's offer to purchase such Notes which an Authorized Officer is hereby authorized to accept. Each Authorized Officer is hereby separately authorized, alone or with others, to execute and deliver a purchase agreement for each series of the Notes in such form as may be approved by the officer executing the same, such Authorized Officer's execution thereof on behalf of the Village to be conclusive evidence of such authorization and approval.

The proceeds from the sale of each series of the Notes, except as any premium and accrued interest received, shall be deposited in an appropriate fund and used for the purpose aforesaid and for no other purpose and for which purpose such proceeds are hereby appropriated. Any premium and accrued interest received from such sale shall be transferred to an appropriate fund as permitted by law to be applied to the payment of the principal and interest of the Notes or other purposes in the manner provided by law.

Each Authorized Officer, the Director of Law, the Clerk of Council and other appropriate officials of the Village, are each hereby separately authorized, without further action of this Village Council, to take any and all actions and to execute such other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams, A Division of Dinsmore & Shohl LLP, bond counsel for the Notes, in order to effect the issuance of the Notes and the intent of this ordinance. The Clerk of Council, or other appropriate officer of the Village, shall certify a true transcript of all proceedings had with respect to the issuance of each series of the Notes, along with such information from the records of the Village as is necessary to determine the regularity and validity of the issuance of the Notes.

SECTION 7. This Village Council hereby 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 obligations the interest on which is subject to federal income taxation or “arbitrage bonds” under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations prescribed thereunder, including any expenditure requirements, investment limitations or rebate requirements. Without limiting the generality of the foregoing, this Village Council represents and covenants that not more than 10% of the improvements financed with the proceeds of the Notes shall be used directly or indirectly in the trade or business of any person that is not an “exempt person” within the meaning of the Code. Any Authorized Officer or any other officer having responsibility with respect to the issuance of the Notes is hereby separately authorized and directed to give an appropriate certificate on behalf of the Village on the date of delivery of the Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

Each Authorized Officer is hereby separately authorized to designate some or all of the Notes as “qualified tax-exempt obligations” to the extent permitted by Section 265(b) of the Code and not already deemed so designated, if such Authorized Officer finds and determines that the reasonably anticipated amount of tax-exempt obligations (whether or not designated as qualified) issued and to be issued by the Village during the calendar year in which such Notes are issued, including such Notes, does not exceed \$10,000,000. Each Authorized Officer is hereby separately authorized to take such additional actions and give such certifications on behalf of the Village with respect to the reasonably anticipated amount of tax-exempt obligations to be issued by the Village during such year and with respect to such other matters as appropriate under the Code, including representing and covenanting on behalf of the Village that the amount of tax-exempt obligations issued by the Village and designated as “qualified tax-exempt obligations” for such purpose during such year will not exceed \$10,000,000.

Each Authorized Officer or any other officer having responsibility with respect to the issuance of the Notes is authorized and directed to (a) make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the Village 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 such Authorized Officer, which action shall be in writing and signed by such Authorized Officer or such officer, on behalf of the Village; and (b) give an appropriate certificate on behalf of the Village on the date of delivery of the Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148, and the representations, warranties and covenants of the Village regarding compliance by the Village with Sections 141 through 150 of the Code, and in each case, the regulations thereunder.

SECTION 8. Each Authorized Officer is hereby separately authorized, alone or with others, to prepare and distribute to prospective purchasers of the Notes and other interested parties, a preliminary official statement with respect to the Notes on behalf of the Village, which shall be in substantially the form heretofore submitted to this Village Council with such changes thereto as such officials may approve, and which shall be deemed final for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1) except for certain information excluded therefrom in accordance with such Rule and which will be provided in the final official statement. Each Authorized Officer is hereby separately authorized, alone or with others, to prepare, execute and deliver a final official statement with respect to the Notes on behalf of the Village, which shall be in such form as the officials signing the same may approve, and which shall be deemed to be final for purposes of Securities and Exchange Commission Rule 15c2-12(b)(3), their execution thereof on behalf of the Village to be conclusive evidence of such authorization and approval, and copies thereof are hereby authorized to be prepared and furnished to the purchaser of the Notes for distribution to prospective purchasers of the Notes and other interested persons.

The Village hereby covenants and agrees that it will execute, comply with and carry out all of the provisions of a continuing disclosure certificate dated the date of issuance and delivery of the Notes (the "Continuing Disclosure Certificate") in connection with the issuance of the Notes. Failure to comply with any such provisions of the Continuing Disclosure Certificate shall not constitute a default on the Notes; however, any holder of the Notes may take such action as may be necessary and appropriate, including seeking specific performance, to cause the Village to comply with its obligations under this paragraph and the Continuing Disclosure Certificate.

SECTION 9. Each Authorized Officer is hereby separately authorized, alone or with others, to execute and deliver an agreement with the Paying Agent and Registrar for its services as paying agent, registrar and transfer agent for the Notes, in such form as such officer may approve, the execution thereof by such officer to be conclusive evidence of such authorization and approval.

SECTION 10. The Village covenants that it will use its best efforts to issue renewal notes or bonds in such amounts and bearing such terms as may be necessary to provide sufficient moneys to retire the Notes at maturity after allowing for any Revenues or other funds that may be lawfully available.

SECTION 11. 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 Note certificates in fully registered form are issued only to the Depository or its nominee as registered owner, with the Notes "immobilized" to the custody of the Depository, and the book entry maintained by others than the Village is the record that identifies the owners of beneficial interests in those Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its Participants or otherwise, a book entry system to

record ownership of beneficial interests in Notes or principal and interest, and to effect transfers of Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

All or any portion of the Notes may be initially issued to a Depository for use in a book entry system, and the provisions of this Section shall apply to such Notes, notwithstanding any other provision of this ordinance. If and as long as a book entry system is utilized with respect to any of such Notes: (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 of Notes 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 its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; 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 Village. Debt service charges on Notes in book entry form registered in the name of a Depository or its nominee shall be payable in the manner provided in the Village’s agreement with the Depository 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 Paying Agent and Registrar may, with the approval of the Village, 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 in this ordinance, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the Paying Agent and Registrar. 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 Paying Agent and Registrar shall furnish a copy of each of those agreements, certified to be correct by the Paying Agent and Registrar, to any other paying agents for the Notes. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this ordinance.

The Paying Agent and Registrar, the Authorized Officer, and any one or more of them acting alone, is authorized and directed without further action of this Village Council to execute, acknowledge and deliver, in the name of and on behalf of the Village, a blanket letter agreement between the Village and The Depository Trust Company, as Depository, to be delivered in connection with the issuance of the Notes to the Depository for use in a book entry system, and to take all other actions they deem appropriate in issuing the Notes under a book entry system.

If any Depository determines not to continue to act as Depository for the Notes for use in a book entry system, the Village, the Paying Agent and Registrar may attempt to establish a securities depository/book entry relationship with another qualified Depository under this ordinance. If the Village, the Paying Agent and Registrar do not or are unable to do so, the Village, the Paying Agent and Registrar, after the Paying Agent and Registrar have 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 definitive Notes), if the event is not the result of action or inaction by the Village or the Paying Agent and Registrar, of those persons requesting such issuance.

SECTION 12. Each Authorized Officer, or any other officer, employee or agent of the Village, is hereby separately authorized, alone or with others to apply for a rating from one or more national rating services with respect to the Notes, and any such actions heretofore taken are hereby approved, ratified and confirmed. The payment of the fees and expenses relating to any such rating from the proceeds of the Notes is hereby authorized.

SECTION 13. The law firm of Peck, Shaffer & Williams, A Division of Dinsmore & Shohl LLP be and is hereby retained as bond counsel to the Village to prepare the necessary authorization and related closing documents for the issuance, sale and delivery of the Notes and, if appropriate, rendering its approving legal opinion in connection therewith in accordance with the written agreement presently on file with the Village which each Authorized Officer is hereby separately authorized to execute and deliver on behalf of the Village, with such changes thereto not substantially adverse to the Village as may be approved by the officer(s) executing the same. The approval of such changes by such officer(s), and that the same are not substantially adverse to the Village, shall be conclusively evidenced by the execution of such agreement by such officer(s). Such law firm shall be compensated by the Village and/or the Purchaser for the above services in accordance with such written agreement.

SECTION 14. The Director of Finance is hereby directed to forward a certified copy of this ordinance to the County Auditor of each county in which any part of the Village is located.

SECTION 15. It is found and determined that all formal actions of this Village Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Village Council, and that all deliberations of this Village Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including Section 121.22 of the Ohio Revised Code.

SECTION 16. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare for the reason that the immediate issuance of the Notes is required to provide funds to support contracts for the Project so that the Project may be completed at the earliest possible time in order to minimize the risk of price increases.

Date of Introduction: August 18, 2015

By: David Keck

Date Passed: 9-1-, 2015



[Signature] 9-1-15
Sean Stanearth, Mayor

ATTEST TO:

APPROVED AS TO FORM:

[Signature]
Teresa Monroe
Clerk of Council

[Signature]
Jennifer Croghan
Law Director

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