

**VILLAGE OF BOSTON HEIGHTS
COUNCIL MEETING AGENDA
TUESDAY, MARCH 11, 2014
7:00 PM**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ALSO: Mayor Bill Goncy, Fiscal Officer Betty Klingenberg, Solicitor Marshal Pitchford, Engineer Dave Krock

R.Antal X - B.Bartko X - J.Miller X- G.Blakeney X- R.Fenn X- D.Polyak X

APPROVAL OF AGENDA

Amended to include RES 2014-3-15 and renumber the resolutions, and APPROVED AS AMENDED

OPEN FORUM

Dave Himes, Olde Eight Road, asked about possible changes in the waterline program proposal (ORD 2013-3-8). Councilor Don Polyak stated that the same legislation is before Council as previously (it later turned out that a map had been added to the program plan to show where the County Health District had noted possible septic contamination in the same area). Mr. Himes noted that the Village had already persented the earlier plan and should stick to that -- presumably this in response to earlier discussions about the fairness and propriety of the Village providing full house hookups to the new water mains. He saw no issues with "fairness" despite some residents benefitting from this particular project.

Kathy Holsopple, Wolcott Drive, urged Council to vote for the waterline program. She observed that while her own well water was plentiful, it was of very poor quality, and city water service was needed. She asked about earlier discussions of dual well/city water supply schemes, and Village Engineer Dave Krock confirmed that this was not permitted by Cleveland Water. Any water well must be capped off or could be preserved only for outdoor use without connection to the home -- but even then a backflow preventer must be installed (presumably at homeowner expense) and inspected annually (also at homeowner expense). Ms. Holsopple also asked whether sewer charges would be tacked on to water charges; Mr. Kock said "no". He also confirmed that future-use house piping, without immediate use of the water supply, were not permitted by Cleveland Water either. Homeowners will have to choose to hook up and use the city water supply, or forgo the Village's hookup offer.

Frank Baxter, of Boston Mills Road, acknowledged the difficulty of Council's decision on the waterline program. He suggested that the precedent of the Village covering house hookups to new water mains is actually a good one and the practice should be extended to future projects. However, he felt that Council members that would directly benefit from this particular program should abstain from voting on the matter. (Note: Mr. Baxter, a former Council member himself, was likely referring as a precaution to State of Ohio Ethics Commission's guidelines on matters of this sort, as explained here: <http://ethics.ohio.gov/education/factsheets/InfoSheet8-Property.pdf> and <http://ethics.ohio.gov/advice/opinions/92-019.pdf> and ORC 102.03(D) .)

Henry Rish, of Sholle Drive, opined that "fairness" had not been applied to residents of his street, for years, on water service and on other improvements. He felt that this waterline program is a positive development, and as the Village had made the offer, it should stick to it -- and that Council members had plenty of time to consider changes already.

An unidentified woman in the audience berated Mr. Baxter (above) for his suggestion that affected Council members abstain from voting on the waterline program issue. She appeared to believe that Mr. Baxter was making a personal attack on the ethics of some Council members, and would not entertain Mr. Baxter's protest of this interpretation.

CORRESPONDENCE

Mayor Goncy noted his receipt of an email lauding the Village's police officers and Valley Fire personnel in their handling of a recent accident on Route 8.

APPROVAL OF MINUTES: All approved, with a note on Mr. Bartko's statement last month..

Minutes of February 11, 2014

Minutes of March 3, 2014

Minutes of March 5, 2014

ORDINANCES

ORDINANCE 2014-2-4
(Second Reading)

ADOPTED: ORD 2014-2-4

ORDINANCE AMENDING SECTION 337.31 OF THE CODIFIED ORDINANCES ON THE SUBJECT OF PROHIBITING "TEXTING" WHILE DRIVING, AND DECLARING AN EMERGENCY

NOTE: Last month, Councilor Jane Miller declines to suspend the three-reading rule for this ordinance. Solicitor Pitchford explained that this brings the previously-enacted anti-texting ordinance into conformance with the current state law. The current Village ordinance was Ord. 2013-3-8 (April 2013) and may be found here:

[Http://www.bostonheights.org/Village/Council/Agenda/VBHCO-Agenda-130410.pdf#PAGE=2](http://www.bostonheights.org/Village/Council/Agenda/VBHCO-Agenda-130410.pdf#PAGE=2)

A comparison shows that the change removes the Village's attempt to make texting-while-driving a primary (stoppable) offense. This was confirmed by the Solicitor: it's back to being a secondary (non-stoppable) offense, the same as the state law. The Mayor noted that this change was at the request of the Village's Police Department.

ORDINANCE 2014-3-8
(Third Reading)

As this was the 3rd reading, there was not need to suspend the 3-reading rule. Main motion by Polyak, seconded by Blakeney.

ADOPTED: ORD 2014-3-8

By 4-2:

YES: Miller, Fenn, Polyak, Blakeney.

NO: Bartko, Antal

ORDINANCE ESTABLISHING THE 2014-2016 WATER LINE INSTALLATION PROGRAM AND DECLARING AN EMERGENCY

NOTE: Previous readings occurred at the Special Council Meetings on 3 March 2014 and 5 March 2014. The Solicitor reportedly added to the plan document a Summit County Health District map, which showed an area of concern in the affected area of the Village with respect to septic contamination in groundwater.

Councilor Don Polyak stated that this very concern was a significant reason for the ordinance's statement of a public health justification for this plan to bring waterlines right to the homes in the affected area. He felt that this was a very important opportunity for the Village and, having done his homework, was strongly in support of the proposal. Future projects, he said, should be dealt with on their own merits, but health concerns exist in this current situation and he encouraged Council to vote for the measure.

Note that Mr. Antal had previously expressed concern about the propriety of the Village paying for waterline hookups on homeowners' private property.

RESOLUTIONS

RESOLUTION 2014-3-13
(First Reading)

ADOPTED: RES 2014-3-13

**RESOLUTION UNWINDING VILLAGE COUNCIL'S MOTION
APPROVING THE MAYOR'S DECISION TO TERMINATE
JAMES ROBINSON AND DECLARING AN EMERGENCY**

NOTE: Councilor Bob Bartko asked what "unwinding" meant in this context. The Solicitor explained that it reversing or undoing the action. The text of the resolution states that the previous action is rescinded *pursuant to and in consistent with the terms of an agreement* and that that agreement (RES 2014-3-14 below) is a precondition of this "unwinding". As this Resolution restores Mr. Robinson to his previous position as Road Superintendent and pays back wages, it seems likely that the agreement makes some provision for Mr. Robinson otherwise ending this restored employment, as the Village already employs someone else as Road Superintendent. This is possibly connected to the special early retirement program set up in December 2013 under Ordinance 2013-12-35. Mr. Robinson's termination as Road Superintendent was upheld by Council 6-0 following an *in camera* administrative hearing following the October 9, 2013 Council meeting.

RESOLUTION 2014-3-14
(First Reading)

ADOPTED: RES 2014-3-14

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
AN AGREEMENT WITH JAMES ROBINSON AND DECLARING
AN EMERGENCY**

RESOLUTION 2014-3-15
(First Reading)

ADOPTED: RES 2014-3-15

RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE TO
ENTER AN AGREEMENT WITH STATE OF OHIO REGARDING
THE AKRON-CLEVELAND ROAD BRIDGE PROJECT AND
DECLARING AN EMERGENCY

NOTE: Solicitor Pitchford explained that ODOT had requested this resolution at very much the last minute, but it was needed quickly in order for the (long-awaited) Akron-Cleveland Road bridge project to proceed on schedule. Engineer Dave Krock explained, in response to queries, that the \$457K figure in the resolution was the *total* estimated Village share of the project (20%, with 80% Federal funding), but that about \$281K of that was to be ultimately paid by Summit Metro Parks to ensure Bike & Hike Trail access through a tunnel under that new bridge. The Village's own outlay was therefore projected to be on the order of \$176K, though it would have to front the larger figure initially. The Mayor added that Summit Metro Parks had the Village's thanks for their participation in this project and for earlier help with the old bridge's safety issues.

Mr. Krock stated that the project was planned to go out for bids shortly and would start this year.

REPORTS
MAYOR

B. GONCY

Mayor Bill Goncy stated that, in addition to what he reported under CORRESPONDENCE, he had received some inquiries from residents regarding the waterline program proposal and answered them accordingly. He encouraged anyone with questions about that or other Village matters to contact him at the Village Hall, or any Council member.

FISCAL OFFICER

B. KLINGENBERG

Fiscal Officer Betty Klingenberg announced that she had included some reports with the Council members' other documents, and that a Village newsletter and ReWorks recycling brochure would be forthcoming. There was a short discussion of the Village's recycling performance; the Mayor offered to put together some statistics.

COMMITTEE REPORTS:

SAFETY COMMITTEE / VALLEY FIRE DISTRICT G. BLAKENEY

Councilor Glen Blakeney stated that the Safety Committee had met on Feb. 18 (next; March 18) and received Police Chief Heatwall's report on his department's vehicles. Most of the existing cruisers would be kept for the time being; one was "totalled" in a recent accident, and an order for an all-wheel-drive SUV has been placed. In addition, a Crown Victoria auto previously used by the Fire Department would now be used by the Police Department. Regarding Mr. Rock's inquiry about Neighborhood Watch programs: the committee and Police Chief felt that crime levels in the Village did not justify a community-wide program, but concerned residents should contact the Chief or the Mayor regarding specific requests for patrolling or other enforcement concerns. The Village would be stepping up speed enforcement on Olde Eight Road, as well as borrowing the County Sheriff's speed meter display. Valley Fire responded to a total of 95 calls in the preceding month (total, both stations), and their training and grant-seeking activities continue.

ROADS COMMITTEE

R. FENN

Councilor Ron Fenn stated that the Road Committee had met on the Feb. 17 (next: March 17). They reviewed the status of equipment and repairs in the Road Department, as well as the salt shed status (pending future repairs). Cold patching of the roads continues.

LANDS AND BUILDINGS COMMITTEE / PARK

J. MILLER

Councilor Janet Miller reported that the committee had met on the 6th of March and discussed possible replacement of the Service building roof, as well as other roofs on Village properties. The police station would be acquiring a

“restraint bench” further to its certification as a 6-hour-hold facility, and possible security equipment upgrades. The committee was considering security cameras for the Service building and the Park. An equipment inventory is in progress in the Service building. Fluorescent bulbs and ballasts will be replaced with currently-available units all throughout Village property, with part of the cost paid by a grant. The Deputy Clerk of Mayor’s Court reports that the new Baldwin software is working well for her department, and the Fiscal Officer reported that a final switchover to the new accounting software from the State Auditor is just now being carried out.

The Park Board is considering a recommendation to hire a Park Manager, and is discussing the Boston Heights Community Foundation, along with the Cemetery Trustees.

CEMETERY TRUSTEES

R. FENN

[CEMETERY COMMITTEE]

Councilor Ron Fenn reported that the Cemetery Trustees had met on March 3 and had proposed some changes for the Cemetery rules and regulations, which would be discussed with the Solicitor. The Cemetery Association heard a presentation from Solicitor Marshal Pitchford regarding the Boston Heights Community Foundation. The Association has a work session scheduled this coming Saturday, and would next meet on April 3. Council approved a motion that the Village “sponsor and host” the following upcoming events:

Easter Egg Hunt - 04/12/2014 - 9:00 AM to 12:00 Noon - MOTION (for Vlg support)

Community Yard/Rummage Sale - 5/10/2014 - 9:00 AM to 2:00 PM - MOTION (for Vlg support)

Memorial Day Parade - MOTION (for Vlg support)

In response to a question from Mrs. Miller, the Solicitor confirmed that this step was necessary to ensure that the Village’s insurance would apply to these events. The Mayor added that he was looking into additional insurance coverage for volunteers at these events, which might be supplied in the future via the Foundation.

ECONOMIC DEVELOPMENT COMMITTEE

R. ANTAL

Councilor Ron Antal stated that the Committee did not meet.

PLANNING COMMISSION / BZA

D. POLYAK

[ZONING COMMITTEE]

Councilor Don Polytak reported that the BZA had considered and deferred a variance request, and that the PC had considered and deferred an approval of commercial building additions. In addition, the PC had continued its review and revision of the Village’s antiquated zoning codes, with the able assistance of the Solicitor’s current legal intern Lydia Bronstein (with previously with Blake Zedar).

ENGINEER

D. KROCK

Engineer Dave Krock noted that Parkside Estates subdivision was to have a preliminary construction meeting, so that residential project was moving forward. The Village’s report on stormwater matters had been submitted to the EPA. He was looking into additional funding opportunities for Hines Hill Road improvements (apparently related to the Arhaus project and future retail development on the former golf course).

OLD BUSINESS

NONE

NEW BUSINESS

NONE

EXECUTIVE SESSION

NONE

ADJOURN

NOTICE

The complete text of each such Ordinance or Resolution may be obtained or viewed at the Boston Heights Village Hall, 45 East Boston Mills Road in the Office of the Fiscal Officer during office hours.

VILLAGE OF BOSTON HEIGHTS
ORDINANCE NO: 2014-2-4
SECOND READING / **ADOPTED**

**ORDINANCE AMENDING SECTION 337.31 OF THE CODIFIED
ORDINANCES ON THE SUBJECT OF PROHIBITING "TEXTING" WHILE
DRIVING AND DECLARING AN EMERGENCY**

WHEREAS; The Council for the Village of Boston heights desires to protect its residents and those who operate on roadways open to the public; and,

WHEREAS; "texting" while driving a motor vehicle is highly dangerous and places the driver and the motoring public at large at risk.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of Boston Heights, Summit County, Ohio as follows:

Section 1: That Codified Ordinance 337.31 be amended to replace Section 1(D) and add Section 1(E) as follows:

(D) Notwithstanding any provision of the law to the contrary, no law enforcement office shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (A) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(E) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

Section 2: That this Council hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council which resulted in formal action were taken in meetings open to the public, in full compliance with the applicable legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate conformity with Ohio Revised Code Section 4511.204 and preservation of the public peace, health, safety of the Village residents and to allow for the continued operations of the Village Police Department and other departments and shall therefore take effect and be in force from and immediately after its passage.

PASSED:

BILL GONCY, Mayor

ATTEST:

I, BETTY KLINGENBERG, Fiscal Officer and Clerk of the Council for the Village of Boston Heights, Summit County, Ohio do hereby certify that the foregoing Ordinance **2014-2-4** 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 March, 2014.

BETTY KLINGENBERG, FISCAL OFFICER

VILLAGE OF BOSTON HEIGHTS
ORDINANCE NO: 2014-3-8
THIRD READING / **ADOPTED**

**ORDINANCE ESTABLISHING THE 2014-2016 WATER LINE INSTALLATION
PROGRAM AND DECLARING AN EMERGENCY**

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Boston Heights, Summit County, Ohio as follows:

Section 1: That the 2014-2016 Water Line Installation Program, as substantially outlined in the document attached hereto as Exhibit "A," be hereby adopted and approved.

Section 2: That the implementation of this program is found to be in the public interest and serves to promote, protect and preserve the general health, welfare and safety of the Village of Boston Heights. The program fulfills this purpose in various ways, including, but not limited to providing safe and healthy drinking water to Village residents and providing a sustainable source of potable water to Village residents in an area where environmental and other natural conditions threaten the residents' water supply.

Section 3: That this Council hereby finds and, determines that all formal actions relative to the adoption of this Ordinance was taken in an open meeting of this Council and that all deliberations of this Council which resulted in formal action were taken in meetings open to the public, in full compliance with the applicable legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of the Village residents and to allow for the immediate commencement of the Water Line Installation Program so as to allow sufficient time for all of the. necessary elements of the plan to be implemented before weather delays to program with significant financial expenses and for the continued operations of the Village and shall therefore take effect and be in force from and immediately after its passage.

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 2014-3-8** 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 March, 2014.

EXHIBIT A: ORDINANCE 2014-3-8

THE VILLAGE OF BOSTON HEIGHTS

2014-2016 Waterline Installation Program

- A. **General Program Outline.** The Village of Boston Heights is implementing a two (2) to three (3) year Waterline Installation Program wherein the Village shall oversee and/or implement the design and installation of waterline mains and residential connections in certain portions of the Northwest quadrant of the Village ("The Program"). The Village shall engage a qualified engineering firm to prepare appropriate designs and plans for the entire project. The Village shall be responsible for the installation of waterline mains along specified residential, or "local," streets within the Village. The installation of the waterline main along a certain portion of Olde Eight Road shall not be made at Village expense. The Residential property owner ("homeowners" or "property owners") along the specified portions of the roadways within the Program, including only the affected portion of Olde Eight Road, shall be offered an opportunity to, at their option and at Village expense, contract with approved and pre-qualified plumbers to connect to the waterline mains installed as a part of the Program. The property owners with existing residences who do not currently have water service from the City of Cleveland and are having a new waterline main installed in front of their property as a part of this Program are the only property owners who are eligible to participate. The homeowners shall have until one (1) year from the date the new waterline mains are operational to have the connection completed or the Village shall not pay the selected contractor's fees.

After the design and engineering plans have been completed, the Program shall consist of three (3) primary components:

- (1) the installation of a waterline main along a certain portion of Olde Eight, specifically being from Grandview Drive to Hines Hill Road;
- (2) the installation of a waterline mains along Beverly Drive, Grandview Drive, Richard Road, Sholle Drive, and Wolcott Drive; and,
- (3) the water service connection of residential homeowners along those portions of the roads where waterline mains are being installed, if the homeowner has elected to participate in the Program as set forth in the Program Guidelines.

After water service has been connected to a residence, the homeowner shall be responsible for all monthly water service bills (water usage) in accordance with the City of Cleveland, Division of Water rules, who will be providing residential water service.

- B. **Program Phases.** The Program shall have several stages, including but not limited to:

- (1) Initial Residential Opt-In Phase;
- (2) Global Design Phase;
- (3) Village Mainline Bidding Stage;

EXHIBIT A: ORDINANCE 2014-3-8

THE VILLAGE OF BOSTON HEIGHTS

- (4) Plumber Qualification and Screening Phase;
- (5) Village Mainline Construction Stage;
- (6) Residential Opt-In Confirmation Notice and Packet;
- (7) Private Residential Contract Connection Phase; and,
- (8) Water service with the City of Cleveland.

Program phases or stages may overlap in time.

C. **Program Guidelines.**

(1) **Initial Residential Opt-In Phase.** As a part of this Program, the Village is offering property owners with existing residences along those streets (or portions of streets) identified herein a one-time opportunity to "Opt-In" for public water service connection to their home at the Village's cost. The Village administration shall identify each eligible property owner along the specified roadways or portions of roadways within the Program and send, via certified mail, to each address on file with the County Fiscal Officer packet of materials enclosing a descriptive letter of the Program, this Program plan, and a self-addressed envelope and "Opt-In" application form or card ("Initial Packet"). Eligible homeowners are those who do not currently have water service from the City of Cleveland and are having a new waterline main installed in front of their property as a part of this Program. To participate in the Program, property owners must deliver a completed "Opt-In" application form or card to the Village Hall or Village Engineer no later than close of business on Friday, April 11, 2014. Failure to return the "Opt-In" application form or card to the Village Hall or Village Engineer by the April 11, 2014 deadline shall be deemed as the property owner's decision to not participate in the Program.

The descriptive cover letter shall advise the property owner, among other things, that a new waterline main will soon be installed in the Village Right-of-Way on their street and that upon that line's functioning and approval for use, the homeowner may select from a list of Village approved third-party plumber to install a water service connection to the property owner's home, including connection to the interior plumbing, and disconnection of plumbing to water wells. The meter, which will likely be internal to the home, will be installed by the City of Cleveland. This will all be completed at no cost to the homeowner.

The letter shall also advise that if the homeowner wishes to opt-in and apply for public water service to a home, the homeowner will need to sign the approved application and return to Boston Heights Village Hall or Engineer's office within the limited decision window. The letter shall also state that any forms not received will be treated as an "Opt-Out," and that the property owner will no longer be eligible to participate.

The Village shall mail a reminder postcard to the identified property owners along the streets identified herein on or about Friday, March 21, 2014. The reminder card in this phase shall

EXHIBIT A: ORDINANCE 2014-3-8

THE VILLAGE OF BOSTON HEIGHTS

indicate, among other things, that a packet was mailed to that property owner regarding the Program, that the property owner is being afforded an opportunity to elect to participate in the Program at no cost, that the deadline to elect to participate is Friday, April 11, 2014, and that failure to return the "Opt-In" application form or card by that date will result in the homeowner's inability to participate in the Program.

No later than April 25, 2014, a post card shall be sent to the Village to each property owner confirming his/her/its status as either "opting-in" or "opting-out."

(2) **Global Design Phase.** The Village shall be responsible for the preparation of engineering and design plans for all of the waterline mains as specified in this Program. The Village shall solicit and advertise for a Statement of Qualifications from engineering firms for the purpose of designing and preparing engineering plans for the installation of the waterline mains in the Program. No later than Friday, April 11, 2014, the Village shall select an engineering firm for the purpose of preparing the required design plans.

(3) **Village Mainline Bidding Stage.** For the five residential, or "local," streets identified above, the Village shall prepare a bid package and post same in accordance with Ohio law.

(4) **Plumber Qualification and Screening Phase.** As part of the Program, property owners will be able to contract with outside plumbers for the Residential Connection Phase of the Program. In order to monitor costs, protect the Village residents and ensure safe and healthy water within the Village, the Village Engineer shall solicit a statement of qualifications from plumbers and/or contractors for the purpose of completing the Private Residential Contract Connection Phase. Prior to the issuance of the Statement of Qualifications, the Village shall identify the properties that have "opted-in" for the Project. The Village shall place a cost limit on work to be done at each property. The homes and properties may be categorized into several different groups for costs and efficiency purposes.

No more than seven plumbers/contractors shall be preapproved and qualified to participate in the Program. The plumbers/contractors shall agree to fully indemnify, defend and hold harmless the Village for any work completed as part of the Project. The plumbers/contractors shall also agree to the final hourly and "not to exceed" pricing established by the Village Engineer for the Program and all other stipulations required by the Village.

Property owners will not be considered intended third-party beneficiaries of the contractual arrangement between the plumber/contractor and the Village. Property owners are responsible for their own insurance and the Village shall not be liable for any claims, or other legal damages for any work associated with the installation or connection with the property owners residence to the waterline main.

(5) **Village Mainline Construction Stage.** Upon selection of an approved contractor, the Village shall install the water line mains along the streets of Beverly Drive, Grandview Drive, Richard

EXHIBIT A: ORDINANCE 2014-3-8

THE VILLAGE OF BOSTON HEIGHTS

Road, Sholle Drive, and Wolcott Drive. It is the intent of the Village at this time to have this work completed by July 1, 2015.

A third-party is responsible for and at its own expense shall install the waterline main along Old Eight Road from Grandview Drive to Hines Hill Road. The Village shall, at the appropriate time, give all necessary consents for the purpose of the installation of that water line.

(6) **Residential Opt-In Confirmation Notice and Packet.** Upon completion of the waterline mains installation and their designation as operational by the City of Cleveland and the Village Engineer, the Village shall mail to each property owner that has elected to participate in the Program a "Residential Opt-in Confirmation Notice and Packet." The Confirmation Notice and Packet shall include several things:

- (a) A Confirmation and Selection Form;
- (b) A listing of the pre-approved and qualified plumbers/contractors and their contact information; and,
- (c) Another copy of this Program plan.

The Confirmation Notice and Selection Form shall require the homeowner do a number of things, including but not limited to the following:

- (a) The homeowner must authorize the Village, the plumber/contractor, the City of Cleveland Water Division, Health Department, Inspector, Testing Company, and any other agencies involved with the project to: complete the necessary survey, measurements, design, construction, connection, clean-up, inspection, testing, approvals, and other related tasks, to enter onto private property and perform their duties in support of the Program.
- (b) The homeowner must acknowledge that damage may occur during construction of the project that certain elements of construction may require digging in yards; cutting tree roots; cutting holes in walls, floors, plumbing, etc.; and must authorize the work nonetheless recognizing that the homeowner's recourse will be with the selected contractor;
- (c) The homeowner must also select one of the Village-approved plumber/contractors identified in the packet;
- (d) The homeowner must acknowledge that disruption in water service will occur during construction, multiple times, as the work is completed. The disruptions will be minimized to the extent possible.

Further, as a prerequisite to connecting the public water system to the residence's interior plumbing, the property owner's private water well must be disconnected from the interior

EXHIBIT A: ORDINANCE 2014-3-8

THE VILLAGE OF BOSTON HEIGHTS

plumbing. This will be inspected and verified by the Cleveland Water and the Health Department, prior to any connection of public water. Dual source water supplies, regardless of backflow prevention systems, are not permitted under the Program.

(7) **Private Residential Contract Connection Phase.** After receiving the Residential Opt-In Confirmation Notice and Packet, the homeowner shall call one or more of the plumber/contractors to provide a quote. The plumbers will be required to provide each homeowner a written quote for the connection to the waterline main.

After the property owner has selected the plumber/contractor to complete the residential connection, the Selection Form shall be completed and mailed to the Village with a copy of the written estimate provided by the selected plumber/contractor. The Village Engineer shall confirm that the estimate given is in conformance with the preapproved costs and guidelines as established by the Village and the Engineer. Upon such confirmation by the Village Engineer, the Village shall contact the plumber/contractor for the particular property and advise the work is eligible and may be completed under the Program.

It is the responsibility of the property owner and plumber/contractor to then establish a time and date for the work to be completed. The plumber, homeowner shall cooperate and work with the City of Cleveland, Water Division for all testing, meter installation and all other requirements of the City. In order to be paid by the Village for work completed in this Program, installations, connections and all testing must all be completed no later than one (1) year from the date the waterline mains become "operational." Failure to have a connection completed, tested and approved by this deadline will mean the property owner is responsible for compensating the plumber/contractor pursuant to the written, Village-approved estimate. If no written estimate is renewed by the deadline, the property owner is free to make alternate arrangements but will not be able to contract with the Village approved plumbers at the pre-approved costs.

Repairs will be made to any damaged areas, in an appropriate manner, consistent with this type of work. It will be the responsibility of the third-party plumber to complete any such repair or compensate the homeowner as provided with the Service Agreement between the homeowner and the plumber.

(8) **Water service with the City of Cleveland.** Upon connection, testing and final approval by both the Village and the City of Cleveland, the ownership and responsibility for the water lines and fixtures will change. From the curb box to the home, including all interior plumbing, the homeowner must agree to accept ownership, maintenance, and repair responsibilities of the private section of the water service line. The City of Cleveland, Division of Water shall accept maintenance and repair responsibilities, being from the curb box to and including the water line main. The Village shall accept ownership from the curb box to and including the water line main.

VILLAGE OF BOSTON HEIGHTS
RESOLUTION NO: 2014-3-13
FIRST READING / ADOPTED

**RESOLUTION UNWINDING VILLAGE COUNCIL'S MOTION APPROVING THE
MAYOR'S DECISION TO TERMINATE JAMES ROBINSON AND DECLARING AN
EMERGENCY**

NOW THEREFORE, BE IT RESOLVED by the Council of the Village of Boston Heights,
Summit County, Ohio as follows:

Section 1: That Village Council's decision of October 9, 2013 approving and affirming the Mayor's decision to terminate James Robinson as Village Road Superintendent on August 29, 2013, be hereby unwound. Council finds and declares that said decision is rescinded pursuant to and consistent with terms of an agreement reached with James Robinson. The terms of the separate agreement reached with James Robinson are ongoing preconditions to Council's decision to approve this Resolution.

Section 2: James Robinson is hereby restored to his employment position, effective immediately, and retroactively to August 29, 2013. His compensation for that time period, to wit being only: September, October, November, December, January, and February, is \$2,000.00 a month.

Section 3: All formal actions of this Council related to this Resolution and all deliberations of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of the Village residents and to immediately resolve any and all employment matters and legal claims, valid or not, and to allow for the continued operations of the Village Road Department and other departments and shall therefore take effect and be in force from and immediately after its passage.

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 **Resolution 2014-3-13** 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 March, 2014.

VILLAGE OF BOSTON HEIGHTS
RESOLUTION NO: 2014-3-14
FIRST READING / ADOPTED

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
WITH JAMES ROBINSON AND DECLARING AN EMERGENCY**

NOW THEREFORE, BE IT RESOLVED by the Council of the Village of Boston Heights,
Summit County, Ohio as follows:

Section 1: That the Mayor and Fiscal Officer are hereby authorized and directed to execute all necessary paperwork to fulfill the requirements of the Agreement with James Robinson attached hereto Exhibit "A," including, but not limited to the execution of said Agreement.

Section 2: That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council which resulted in formal action were taken in meetings open to the public, in full compliance with the applicable legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of the Village residents and to immediately resolve any and all employment matters and legal claims, valid or not, and to allow for the continued operations of the Village Road Department and other departments and shall therefore take effect and be in force from and immediately after its passage.

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 **Resolution 2014-3-14** 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 March, 2014.

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

This Confidential Settlement Agreement and Release of Claims (“Agreement”) is entered into by James Robinson for himself and his heirs, successors and assigns (hereinafter “Mr. Robinson”) and by the Village of Boston Heights, Ohio, together with all its officers, employees, agents, contractors, representatives, and insurers (hereinafter collectively referred to as the “Village”).

WITNESSETH:

WHEREAS, Mr. Robinson was employed by the Village in the position of Road Superintendent;

WHEREAS, the Village and Mr. Robinson desire to compromise, settle and resolve any and all dispute(s) between them arising during Mr. Robinson’s employment with the Village, and/or as a result of his separation from employment with the Village and have reached an agreement in that regard;

NOW, THEREFORE, in consideration of the promises, covenants and agreements set forth herein, it is hereby agreed as follows:

AGREEMENT

1. Village Obligations

- a. 1-Year OPERS Buyout: The Village agrees to purchase one (1) year of Ohio Public Employees Retirement System (“OPERS”) service credit for Mr. Robinson through an “Early Retirement Incentive” (“ERI”) Plan created by the Village and submitted by the Village along with all requisite documentation to OPERS for approval. If the aforementioned purchase price from OPERS exceeds \$36,000.00, Mr. Robinson agrees to reimburse the Village for that amount that exceeds \$36,000.00.
- b. Continued Payment of Medical Coverage & Salary: The Village agrees to pay Mr. Robinson for the time period between August 29, 2013 and February 28, 2014. Specifically, Mr. Robinson shall be paid two-thousand dollars (\$2,000) per month: September, October, November, December, January, and February. Mr. Robinson hereby acknowledges that he has already received the aforesaid payments previously before the date of this Settlement Agreement and Release and further hereby waives any and all rights to accrued sick leave, vacation time and compensatory time; no additional salary payments are expected to be paid at this time or any future time to Mr. Robinson. The Village acknowledges it has paid Mr. Robinson’s medical coverage through December 31, 2013 and will not seek payment from Mr. Robinson for that coverage.

EXHIBIT A: RESOLUTION 2014-3-14 [replica, format may differ from original]

- c. Resignation: Mr. Robinson shall be permitted to resign from his employment from the Village for personal reasons. This resignation shall be on or before March 13, 2014. The Village shall take all necessary steps to rescind the action taken by Village Council at the October 9, 2013 Council meeting, and Mr. Robinson's personnel file shall reflect his separation of employment with the Village due to his resignation for personal reasons to the extent permitted by law.
- d. Letter of Recommendation: The Village shall provide a neutral letter(s) of recommendation for employment to Mr. Robinson upon request. A copy of the letter to be utilized is attached hereto as Exhibit "A."

Mr. Robinson agrees that the buyout, continued medical benefits and payment of salary, and neutral letter of recommendation as set forth above represent settlement of any and all claims for termination without just cause/wrongful termination, healthcare premiums, and represents full and complete satisfaction and payment of any and all back pay, severance pay, wages (whether overtime or otherwise), bonuses, vacation pay, front pay, benefits, attorneys' fees, costs, interest, or other monies to which Mr. Robinson may have been entitled to receive or recover during or following his employment with the Village through the present day, except Mr. Robinson's accumulated leave shall remain in the OPERS system and shall be transferred to any future public employer pursuant to law. Mr. Robinson agrees that after the date of this Settlement Agreement and Release he will not seek unemployment compensation benefits related to his work at the Village. The Village will not challenge unemployment benefits already received by Mr. Robinson.

- 2. Release of Claims: Mr. Robinson, in consideration of the above-mentioned terms, does for himself, and his heirs, executors, administrators, and assigns, hereby release and forever discharge the Village and their affiliated parties, including, but not limited to, its officers, employees, former employees, agents, contractors, representatives, and insurers from all actions, causes of action, claims, suits, discrimination charges or claims, debts, grievances, sums of money, attorneys' fees, costs, claims for reinstatement, or claims and demands of any kind or description whatsoever in law or in equity, known or unknown, arising out of any matter whatsoever, including, but not limited to, Mr. Robinson's former employment with the Village and the separation thereof, to the date hereof, and including but not limited to any claims made under any federal, state and/or local statutes, ordinances, and/or regulations such as The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.; The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.; the Older Workers Benefit Protection Act, 29 U.S.C. § 626, or the common law of the State of Ohio, arising out of or relating in any manner whatsoever to any alleged act or omission of the Village occurring before the date of the execution of this Agreement. The parties acknowledge and agree that this Agreement does not affect Mr.

EXHIBIT A: RESOLUTION 2014-3-14 [replica, format may differ from original]

Robinson's right to file charges with governmental agencies; however, with respect to any such charges which may be filed concerning or relating in any way to his employment or the separation of his employment, Mr. Robinson additionally waives and releases any right he may have to recover in any such proceeding or relating to any such filing.

3. Mr. Robinson acknowledges that he has been advised that he has been given twenty-one (21) days from the receipt of this Agreement to consider it and to consult with his attorney. Further, Mr. Robinson understands that this Agreement will not take effect or be enforceable for a period of seven (7) days after he signs it and that during such seven (7) day period he may change his mind and revoke this Agreement in its entirety. Mr. Robinson further agrees that if he decides to revoke this Agreement after signing same that he must give the Village written notice of the fact of such revocation within seven (7) days of signing this Agreement.

4. No Assignment of Claims: Mr. Robinson represents and warrants that he is the sole and lawful owner of all rights, title and interest in and to all released matters, claims and demands referred to herein. Mr. Robinson further represents and warrants that there has been no assignment or other transfer of any interest in any such matters, claims or demands that Mr. Robinson may have against the Village.

5. Village Response to Inquiry: The Village agrees to respond to every inquiry, whether written or oral, received by the Village regarding Mr. Robinson's employment with the Village, and/or the terms of his separation from employment with the Village, with the statement attached hereto as Exhibit "B."

6. Entire Agreement: Mr. Robinson and the Village agree and acknowledge that this Agreement contains and comprises the entire agreement and understanding between the parties and that no other representation, promise, covenant or agreement of any kind whatsoever has been made to cause any party to execute this Agreement. The parties further agree and acknowledge that the terms of this Agreement are contractual, and not a mere recital, and the parties intend this Agreement to be a substituted contract, not an executory accord. The parties also agree that the terms of this Agreement shall not be amended or changed except in writing and signed by Mr. Robinson and a duly authorized representative of the Village. The parties to this Agreement further agree that this Agreement shall be binding on and inure to the benefit of Mr. Robinson and the Village as defined and described above in this Agreement.

7. Severability: If any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, and such determination shall become final, the remaining provisions shall be enforced so as to give effect to the intentions of the parties insofar as possible.

8. Breach: The parties agree and acknowledge that this Agreement may be used as evidence in any subsequent proceeding in which either party alleges a breach of this Agreement or asserts claims inconsistent with the terms of this Agreement. If a dispute arises concerning

EXHIBIT A: RESOLUTION 2014-3-14 [replica, format may differ from original]

this Settlement Agreement and Release, or the performance of any party pursuant to the terms of this Agreement, the prevailing party is entitled to recover, without affecting any other remedy to which that party may be entitled, all of its costs and reasonable attorneys' fees incurred in connection with that dispute, regardless of whether a lawsuit is filed or prosecuted to conclusion.

9. Non-Admission: The parties understand and acknowledge that this Agreement is made and accepted without any admissions of liability, fault or truth of any allegations, demands, or complaints made by Mr. Robinson, any and all allegations, demands, and complaints having been expressly denied by the Village.

10. Governing Law: The parties acknowledge that each of them is represented by counsel and each has cooperated in the preparation of this Agreement. The parties also agree that this Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Ohio without regard to its conflicts of law rules.

11. Counterparts: This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WE HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS, CONSISTING OF ELEVEN (11) PARAGRAPHS, FULLY UNDERSTAND IT AND, AFTER CONSULTING WITH LEGAL COUNSEL, HAVE SIGNED IT ON THE DATE(S) INDICATED BELOW, SIGNIFYING THEREBY OUR ASSENT TO, AND WILLINGNESS TO BE BOUND BY, ITS TERMS. THE AGREEMENT WILL BECOME EFFECTIVE ONCE SIGNED BY BOTH PARTIES:

Date: _____

James Robinson

Date: _____

VILLAGE OF BOSTON HEIGHTS, OHIO

By:

Name:

Title:

Approved as to form on behalf of the Village by:

Marshal Pitchford, Village Solicitor

VILLAGE OF BOSTON HEIGHTS
RESOLUTION NO: 2014-3-15
FIRST READING / ADOPTED

RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE TO ENTER AN AGREEMENT WITH STATE OF OHIO REGARDING THE AKRON-CLEVELAND ROAD BRIDGE PROJECT AND DECLARING AN EMERGENCY

WHEREAS, on the 9th day of June, 2010, the Village of Boston Heights enacted legislation proposing cooperating with the Director of Transportation for a project, consisting of a bridge replacement and miscellaneous road work, lying within the Village of Boston Heights; and,

WHEREAS, the Village of Boston Heights shall cooperate with the Director of Transportation in the above describe project as follows:

The Village agrees to assume and bear one hundred percent (100%) of the entire costs of the improvement, less the amount of Federal-Aid funds set aside by the Director of Transportation for the financing of this improvement for funds allocated by the Federal Highway Administration, U.S. Department of Transportation; and,

WHEREAS, the share of the cost to the Village is now estimated in the amount of Four Hundred Fifty Six Thousand Seven Hundred Sixteen and — 49/100 Dollars (\$456,716.49), but said estimated amount is to be adjusted in order that the Village's ultimate share of said improvement shall correspond with said percentages of actual costs when said actual costs are determined; and,

WHEREAS, the Director of Transportation has approved said legislation proposing cooperation and has caused to be made planned and specifications and an estimate of costs and expense for improving the above described highway and has transmitted copies of the same to this legislative authority;

WHEREAS, The LPA desires the Director of Transportation to proceed with the aforesaid highway improvement.

NOW THEREFORE, be it resolved by the Council of the Village of Boston Heights as follows:

Section 1. That the estimated sum of Four Hundred Fifty Six thousand Seven Hundred Sixteen and — 49/100 Dollars (\$456,716.49), is hereby appropriated for the improvement describe above and the Mayor is hereby authorized and directed to issue an order on the treasurer for said sum upon the requisition of the Director of Transportation to pay the costs and expense of said improvement. WE hereby agree to assume in the first instance, the share of the costs and expense over and above the amount to be paid from the Federal funds.

Section 2. That the Village hereby requests the Director of Transportation to proceed with the aforesaid highway improvement.

Section 3. That the Village enter into a contract with the State, and that Mayor be, and is hereby authorized to execute said contract, providing for the payment of the LPA the sum of money set forth herein above for improving the described project.

Section 4. That the Village transmit to the Director of Transportation a fully executed copy of this Resolution.

Section 5. That this Council hereby finds and determines that all formal actions relatives to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations which resulted in formal action were taken in meetings open to the public in ful compliance with the applicable legal requirements under the Ohio Revised Code.

Section 6. That this Resolution is hereby declared to be an emergency measure necessary for the immediate [reservation of the public peace, health and safety of the Village residents and to allow for the timely completion of the Akron-Cleveland Road Bridge contract and therefore shall take effect and be in force from and immediately after its passage.

PASSED:

Mayor Bill Goncy

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 **Resolution 2014-3-15** 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 March, 2014.