

**CITY OF EASTPOINTE
COUNTY OF MACOMB
STATE OF MICHIGAN
ORDINANCE NO. 22-1224**

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY; TO PROVIDE FOR THE ISSUANCE AND SALE OF JUNIOR LIEN REVENUE BONDS TO PAY THE COST THEREOF; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF SYSTEM REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS IN ENFORCEMENT THEREOF; TO PRESCRIBE THE FORM OF THE BONDS; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE BONDS AND THE SYSTEM.

THE CITY OF EASTPOINTE ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

- (a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.
- (b) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds and payments to the City in lieu of taxes, to which may be made the following adjustments.
 - (i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect.
 - (ii) Revenues may be augmented by amounts which may be derived from rates and charges to be paid by new customers of the System.
- (c) "Authority" means the Michigan Finance Authority or its successor.
- (d) "Authorized Officers" means the Mayor, the City Manager, the City Clerk and the Finance Director of the City.
- (e) "Bonds" means the Series 2022 Bond, and any additional bonds of equal standing hereafter issued.
- (f) "City" or "Issuer" means the City of Eastpointe, County of Macomb, State of Michigan.
- (g) "EGLE" means the means the Michigan Department of Environment, Great Lakes, and Energy, or its successor.
- (h) "Engineers" means Anderson, Eckstein & Westrick, Inc., registered engineers.
- (i) "Junior Lien Bonds" means the Series 2022 Bond, the Outstanding Junior Lien Bonds any additional bonds of equal standing with the Series 2022 Bond and the Outstanding Junior Lien Bonds which are secured by a statutory second lien on the Net Revenues and are junior and subordinate to the Senior Lien Bonds.
- (j) "Outstanding Junior Lien Bonds" means the Series 2012 Bond.
- (k) "Prior Ordinance" means Ordinance No. 1075 of the City.
- (l) "Project" means the acquisition, construction, furnishing and equipping of improvements to the Water and Sewer System of the City, including water main improvements and replacements and service line replacements, together with all related appurtenances and attachments.
- (m) "Purchase Contract" means the Purchase Contract to be entered into between the Authority and the City relating to the purchase by the Authority of the Series 2022 Bond.
- (n) "Revenues" and "Net Revenues" means the revenues and net revenues of the City derived from the operation of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues," the earnings derived from the investment of moneys in the various funds and accounts established by the Prior Ordinance and this Ordinance.
- (o) "Senior Lien Bonds" means any bonds hereafter issued that are of superior standing and priority of lien with respect to the Bonds and the Outstanding Junior Lien Bonds.
- (p) "Series 2012 Bond" means the Water and Sewer System Junior Lien Revenue Bond, Series 2012, dated September 18, 2012, in the outstanding principal amount of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000).
- (q) "Series 2022 Bond" means the Water and Sewer System Junior Lien Revenue Bond, Series 2022, of the City in the principal amount of not to exceed Six Million Dollars (\$6,000,000) authorized by this Ordinance.
- (r) "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.
- (s) "Supplemental Agreement" means the supplemental agreement among the City, the Authority and EGLE relating to the Series 2022 Bond.
- (t) "System" means the Water and Sewer System of the City, including the Project and all additions, extensions and improvements hereafter acquired.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the City to acquire and construct the Project in accordance with the plans and specifications prepared by the Engineers, which plans and specifications are hereby approved. The Project qualifies for the Drinking Water State Revolving Fund financing program being administered by EGLE and the Authority, whereby bonds of the City are sold to the Authority and bear interest at a fixed rate of one and seven-eighths percent (1.875%) per annum.

Section 3. Costs; Useful Life. The cost of the Project is estimated to be an amount not to exceed Six Million Dollars (\$6,000,000), including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed. The period of usefulness of the Project is estimated to be not less than twenty-five (25) years.

Section 4. Payment of Cost; Bond Authorized. To pay part of the cost of acquiring and constructing the Project, legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2022 Bond, the City shall borrow the sum of not to exceed Six Million Dollars (\$6,000,000) and issue the Series 2022 Bond therefor pursuant to the provisions of Act 94. The remaining cost of the Project, if any, shall be defrayed from grant funds and City funds on hand and legally available for such use.

Except as amended by or expressly provided to the contrary in this Ordinance, all of the provisions of the Prior Ordinance shall apply to the Series 2022 Bond issued pursuant to this Ordinance, the same as though each of said provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of additional revenue bonds of equal standing and priority of lien as to the Net Revenues with the Outstanding Junior Lien Bonds and of subordinate lien with respect to any Senior Lien Bonds to finance the cost of acquiring and constructing additions, extensions and improvements to the System; such purpose being authorized by the provisions of the Prior Ordinance, upon the conditions therein stated, which conditions have been fully met.

Section 5. Issuance of Series 2022 Bond; Details. The Series 2022 Bond of the City, to be designated WATER AND SEWER SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2022 are authorized to be issued in the aggregate principal sum of not to exceed Six Million Dollars (\$6,000,000) or such lesser amount as finally determined by order of EGLE for the purpose of paying part of the cost of the Project, including the costs incidental to the issuance, sale and delivery of the Series 2022 Bond. The Series 2022 Bond shall be payable out of the Net Revenues, as set forth more fully in Section 8 hereof.

The Series 2022 Bond shall be in the form of a single fully-registered, nonconvertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery, payable in principal installments as finally determined by order of EGLE at the time of sale of the Series 2022 Bond and approved by the Authority and an Authorized Officer. Principal installments of the Series 2022 Bond shall be payable on October 1 of the years 2024 through 2043, inclusive, or such other payment dates as hereinafter provided. Interest on the Series 2022 Bond shall be payable on April 1 and October 1 of each year, commencing April 1, 2023 or on such other interest payment dates as hereinafter provided. Final determination of the principal amount of and interest on the Series 2022 Bond and the payment dates and amounts of principal installments of the Series 2022 Bond shall be evidenced by execution of the Purchase Contract and each of the Authorized Officers is authorized and directed to execute and deliver the Purchase Contract when in final form and to make the determinations set forth above; provided, however, that the first principal installment shall be due no earlier than April 1, 2023 and the final principal installment shall be due no later than October 1, 2045 and that the total principal amount shall not exceed \$6,000,000.

The Series 2022 Bond shall bear interest at a rate of not to exceed one and seven-eighths percent (1.875%) per annum on the par value thereof or such other rate as evidenced by execution of the Purchase Contract, but in any event not to exceed the rate permitted by law, and any Authorized Officers as shall be appropriate shall deliver the Series 2022 Bond in accordance with the delivery instructions of the Authority.

The principal amount of the Series 2022 Bond is expected to be drawn down by the City periodically, and interest on principal amount shall accrue from the date such principal amount is drawn down by the City.

The Series 2022 Bond shall not be convertible or exchangeable into more than one fully-registered bond. Principal of and interest on the Series 2022 Bond shall be payable as provided in the Series 2022 Bond form in this Ordinance.

The Series 2022 Bond shall be subject to optional redemption by the City with the prior written approval of the Authority and on such terms as may be required by the Authority.

The Treasurer shall record on the registration books payment by the City of each installment of principal or interest or both when made and the canceled checks or other records evidencing such payments shall be returned to and retained by the Treasurer.

Upon payment by the City of all outstanding principal of and interest on the Series 2022 Bond, the Authority shall deliver the Series 2022 Bond to the City for cancellation.

Section 6. Execution of Series 2022 Bond. The Series 2022 Bond shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the City Clerk and shall have the corporate seal of the City or a facsimile thereof impressed thereon. The Series 2022 Bond bearing the manual or facsimile signatures of the Mayor and the City Clerk sold to the Authority shall require no further authentication.

Section 7. Registration and Transfer. Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any Bond shall be surrendered for transfer, the City shall execute and the transfer agent shall authenticate and deliver a new Bond, for like aggregate principal amount. The transfer agent shall require

payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The City shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 2022 Bond contained in Section 15 of this Ordinance and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. The City shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City; and upon presentation for such purpose the transfer agent shall under such reasonable regulations as it may prescribe transfer or cause to be transferred on said books Bonds as hereinbefore provided.

If any Bond shall become mutilated, the City, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the transfer agent of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the City, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the transfer agent may pay the same without surrender thereof.

Section 8. Payment of Series 2022 Bond; Security; Priority of Lien. Principal of and interest on the Series 2022 Bond shall be payable solely from the Net Revenues. There is hereby recognized the statutory lien upon the whole of the Net Revenues created by this Ordinance which shall be a lien that is equal in standing with the lien of the Outstanding Junior Lien Bonds created by the Prior Ordinance and junior and subordinate to the lien of any Senior Lien Bonds hereafter issued, to continue until payment in full of the principal of and interest on all Junior Lien Bonds payable from the Net Revenues, or until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Junior Lien Bonds of a series then outstanding, principal and interest on such Junior Lien Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any.

Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentences, the statutory lien shall be terminated with respect to that series of Bonds, the holders of that series shall have no further rights under this Ordinance except for payment from the deposited funds, and the Bonds of that series shall no longer be considered to be outstanding under the Prior Ordinance or this Ordinance.

As additional security for repayment of the Series 2022 Bond, the City hereby pledges the taxes collected by the State of Michigan and returned to the Issuer pursuant to Act 140, Public Acts of Michigan, 1971, as amended, to the Authority as purchaser and holder of the Series 2022 Bond, and the City hereby authorizes the Authorized Officers to approve, execute and deliver a Revenue Sharing Pledge Agreement between the City and the Authority, authorizing the State Treasurer to transmit the revenue sharing moneys assigned and pledged therein directly to the Authority or its designee if payments on the Series 2022 Bonds are not made in accordance with this Ordinance. The City shall be reimbursed for any such advance from the Net Revenues of the System subsequently received which are not otherwise pledged or encumbered by this Ordinance.

Section 9. Bondholders' Rights; Receiver. The holder or holders of the Bonds, the Outstanding Junior Lien Bonds and Senior Lien Bonds, if any, representing in the aggregate not less than twenty percent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the City, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest on the Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the City and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the City more particularly set forth herein and in Act 94.

The holder or holders of the Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the security therefor.

Section 10. Management; Fiscal Year. The operation, repair and management of the System and the acquisition and construction of the Project shall be under the supervision and control of the City Council. The City Council, in accordance with the relevant provisions of the City Charter, may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The City Council may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System. The fiscal year of the System shall be the fiscal year of the City.

Section 11. Rates and Charges. The rates and charges for service furnished by and the use of the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance.

Section 12. No Free Service or Use. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentality, including the City.

Section 13. Funds and Accounts; Flow of Funds. The funds and accounts established by the Prior Ordinance are hereby continued, the flow of funds established by the Prior Ordinance, is hereby continued, and the applicable sections of the Prior Ordinance, relating to funds and accounts and flow of funds are incorporated herein by reference as if fully set forth.

Section 14. Bond Proceeds. The proceeds of the sale of the Series 2022 Bond shall be deposited in a separate account in a bank or banks qualified to act as depository of the proceeds of sale under the provisions of Section 15 of Act 94 designated 2022 WATER AND SEWER SYSTEM JUNIOR LIEN REVENUE BOND CONSTRUCTION FUND (the "Construction Fund"). Moneys in the Construction Fund shall be applied solely in payment of the cost of the Project, including any engineering, legal and other expenses incident thereto and to the financing thereof.

Section 15. Bond Form. The Series 2022 Bond shall be in substantially the following form with such changes or completion as necessary or appropriate to give effect to the intent of this Ordinance and further subject to such modifications which may be required by the Michigan Attorney General and the Authority and approved by bond counsel:

**UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MACOMB
CITY OF EASTPOINTE**

WATER AND SEWER SYSTEM JUNIOR LIEN REVENUE BOND, Series 2022

REGISTERED OWNER: Michigan Finance Authority
PRINCIPAL AMOUNT: _____ Dollars (\$_____)
DATE OF ORIGINAL ISSUE: August __, 2022

The CITY OF EASTPOINTE, County of Macomb, State of Michigan (the "City"), for value received, hereby promises to pay, primarily out of the hereinafter described Net Revenues of the City's Water and Sewer System (hereinafter defined), to the Michigan Finance Authority (the "Authority"), or registered assigns, the Principal Amount shown above, or such portion thereof as shall have been advanced to the City pursuant to a Purchase Contract between the City and the Authority and a Supplemental Agreement by and among the City, the Authority and the State of Michigan acting through the Department of Environment, Great Lakes, and Energy, in lawful money of the United States of America, unless prepaid or reduced prior thereto as hereinafter provided.

During the time funds are being drawn down by the City under this Bond, the Authority will periodically provide the City a statement showing the amount of principal that has been advanced and the date of each advance, which statement shall constitute prima facie evidence of the reported information; provided that no failure on the part of the Authority to provide such a statement or to reflect a disbursement or the correct amount of a disbursement shall relieve the City of its obligation to repay the outstanding Principal Amount actually advanced (subject to any principal forgiveness as provided for in Schedule A), all accrued interest thereon, and any other amount payable with respect thereto in accordance with the terms of this Bond.

The Principal Amount shall be payable on the dates and in the annual principal installment amounts set forth on Schedule A attached hereto and made a part hereof, as such Schedule may be adjusted if less than \$_____ is disbursed to the City or if a portion of the Principal Amount is prepaid as provided below, with interest on said principal installments from the date each said installment is delivered to the holder hereof until paid at the rate of one and seven-eighths percent (1.875%) per annum. Interest is first payable April 1, 2023 and semiannually thereafter and principal is payable on the first day of October commencing October 1, 2024 (as identified in the Purchase Contract) and annually thereafter.

Principal installments of this bond are subject to prepayment by the City prior to maturity only with the prior written consent of the Authority and on such terms as may be required by the Authority.

Notwithstanding any other provision of this Bond, so long as the Authority is the owner of this Bond, (a) this Bond is payable as to principal, premium, if any, and interest at U.S. Bank Trust Company, National Association or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository"); (b) the City agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this Bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; in the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment; and (c) written notice of any redemption of this Bond shall be given by the City and received by the Authority's Depository at least 40 days prior to the date on which such redemption is to be made.

Additional Interest

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this bond but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the Authority has been fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the City's default. Such additional interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority) the investment of amounts in the reserve account established by the Authority for the bonds of the Authority issued to provide funds to purchase this bond fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the City shall and hereby agrees to pay on demand only the City's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.