

ORDINANCE NO. 2022-01

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF IMPROVEMENTS TO THE EXISTING WATER AND SEWER SYSTEM OF THE CITY OF LINCOLN PARK; TO PROVIDE FOR THE ISSUANCE AND SALE OF REVENUE BONDS TO PAY THE COST THEREOF; TO PRESCRIBE THE FORM OF THE BOND; TO PROVIDE FOR THE RETIREMENT AND SECURITY OF THE BONDS HEREIN AUTHORIZED; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE BOND AND THE SYSTEM.

THE CITY OF LINCOLN PARK 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 the Bond and payments to the Issuer 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.
- The adjustment of revenues and expenses by the factors set forth in (i) and (ii) above shall be reported upon by professional engineers or certified public accountants or other experts not in the regular employment of the Issuer.
- (c) "Authority" means the Michigan Finance Authority.
 - (d) "Authorized Officers" means the Mayor, Clerk, Treasurer, City Manager and Finance Director of the Issuer.
 - (e) "Bond" or "Bonds" means the Series 2022 Bond, together with the Outstanding Bond and any additional bonds hereafter issued of equal standing with the Series 2022 Bond or the Outstanding Bonds.
 - (f) "Engineers" means Hennessey Engineers, Inc., consulting engineers of Southgate, Michigan.
 - (g) "Issuer" means the City of Lincoln Park, County of Wayne, State of Michigan.
 - (h) "EGLE" means the Michigan Department of Environment, Great Lakes and Energy, or any successor agency.
 - (i) "Ordinance No. 2016-1" means Ordinance No. 2016-1 adopted by the City Council of the Issuer on February 1, 2016, authorizing the issuance of the Series 2016 Bonds.
 - (g) "Ordinance No. 2020-1" means Ordinance No. 2020-1 adopted by the City Council of the Issuer on February 18, 2020, authorizing the issuance of the Series 2020 Bond.
 - (k) "Outstanding Bonds" means the Series 2016 Bonds and the Series 2020 Bond.
 - (l) "Outstanding Ordinances" means Ordinance No. 2016-1 and Ordinance No. 2020-1.
 - (m) "Project" means the acquisition, construction, furnishing and equipping of additions, extensions and improvements to the Issuer's water and sewer system, consisting generally of sewer inflow/infiltration improvements using cured-in-place pipe lining, combined sewer overflow improvements, structural durability improvements, and sewer pump station improvements, together with all necessary structures, equipment, furnishings and all appurtenances and attachments thereto.
 - (n) "Purchase Contract" means the Purchase Contract to be entered into between the Authority and the Issuer relating to the purchase by the Authority of the Bond.
 - (o) "Revenues" and "Net Revenues" means the revenues and net revenues 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 Outstanding Ordinance and this Ordinance, and other revenues derived from or pledged to operation of the System.
 - (p) "Series 2016 Bonds" means the Water and Sewer System Revenue Bond, Series 2016 (Limited Tax General Obligation), dated April 11, 2016, issued pursuant to Ordinance No. 2016-1.
 - (q) "Series 2020 Bond" means the Water and Sewer System Revenue Bond, Series 2020 (Limited Tax General Obligation), dated March 27, 2020, issued pursuant to Ordinance No. 2020-1.
 - (r) "Series 2022 Bond" means the Water and Sewer System Revenue Bond, Series 2022 (Limited Tax General Obligation), of the Issuer in the principal amount not to exceed \$4,000,000 authorized pursuant to this Ordinance.
 - (s) "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 Bond and the principal and redemption premium, if any, on the Bond 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 principal installment of the Bond is to be called for redemption prior to maturity, irrevocable instructions to call the principal installment for redemption shall be given to the paying agent.
 - (t) "Supplemental Agreement" means the supplemental agreement among the Issuer, the Authority and EGLE relating to the Bond.
 - (u) "System" means the Water and Sewer System of the Issuer, including such facilities thereof as are now existing, are acquired and constructed as the Project, and all enlargements, extensions, repairs and improvements thereto hereafter made.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the Issuer 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 State Revolving Fund financing program being administered by the EGLE and the Authority, whereby bonds of the Issuer are sold to the Authority and bear interest at a fixed rate of one and seven-eighths percent (1.875%) per annum.

Except as amended by or expressly provided to the contrary in this Ordinance, all the provisions of the Outstanding Ordinances 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 parity revenue bonds to finance the cost of acquiring, constructing, furnishing and equipping improvements to the System; such purpose being authorized by the provisions of the Outstanding Ordinances (as amended by this Ordinance), upon the conditions therein stated, which conditions have been fully met.

Section 3. Costs; Useful Life. The cost of the Project is estimated not to exceed Four Million Dollars (\$4,000,000) including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed, and 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 the cost of acquiring and constructing the Project, including payment of legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2022 Bond, the Issuer shall borrow the sum of not to exceed Four Million Dollars (\$4,000,000) and issue its Series 2022 Bond therefor pursuant to the provisions of Act 94. The remaining cost of the Project, if any, shall be defrayed from Issuer funds on hand and legally available for such use.

Section 5. Issuance of Bond; Details. The Series 2022 Bond of the Issuer, to be designated WATER AND SEWER SYSTEM REVENUE BOND, SERIES 2022 (LIMITED TAX GENERAL OBLIGATION), is hereby authorized to be issued in the principal amount of not to exceed Four Million Dollars (\$4,000,000) or such lesser amount as finally determined by order of the EGLE for the purpose of paying 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 primarily 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 serially as finally determined by the order of the EGLE at the time of sale of the Series 2022 Bond and approved by the Authority and an Authorized Officer. Final determination of the principal amount of the Series 2022 Bond and the payment dates and amounts of principal installments of the Series 2022 Bond shall be evidenced by execution of a Purchase Contract (the "Purchase Contract") between the Issuer and the Authority providing for sale of the Series 2022 Bond and the Authorized Officers are authorized and directed to execute and deliver the Purchase Contract when it is 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 April 1, 2042, and that the total principal amount shall not exceed \$4,000,000.

The Series 2022 Bond shall bear interest at a rate of 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, payable semiannually on the dates as finally determined in the Purchase Contract. The Series 2022 Bond principal amount is expected to be drawn down by the Issuer periodically, and interest on the principal amount shall accrue from the date such principal amount is drawn down by the Issuer.

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The Series 2022 Bond or principal installments thereof will be subject to prepayment prior to maturity with the prior written approval of the Authority in the manner and at the times as provided in the Bond form in this Ordinance.

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

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

Section 6. Execution of Series 2022 Bond. The Mayor and Clerk are authorized to execute and deliver the Series 2022 Bond in accordance with the delivery instructions of the Authority. The Series 2022 Bond shall be signed with the manual or facsimile signatures of the Mayor and the Clerk and shall have the Issuer's seal impressed or printed thereon. The Series 2022 Bond bearing the manual or facsimile signatures of the Mayor and the 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 Series 2020 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 or Bonds shall be surrendered for transfer, the Issuer shall execute and the transfer agent shall authenticate and deliver a new Bond or 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 transfer agent 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 Bond selected for redemption as described in the form of Series 2022 Bond contained in Section 14 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 Bond being redeemed in part. The Issuer 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 Series 2022 Bond, which shall at all times be open to inspection by the Issuer; 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, Bond as hereinbefore provided.

If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Series 2022 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 Issuer, 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 Series 2022 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 Bond; Security; Priority of Lien. Principal of and interest on the Series 2022 Bonds shall be payable 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 Bonds created by the Outstanding Ordinances, to continue until payment in full of the principal of and interest on all 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 Bonds of a series then outstanding, principal and interest on such 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 sentence, the statutory lien shall be terminated with respect to that series of Bonds, the holders of that series shall have no further rights under the Outstanding Ordinances or 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 Outstanding Ordinances or this Ordinance.

As additional security, the Issuer hereby pledges its limited tax full faith and credit for the payment of the principal of and interest on the Series 2022 Bond. Should the Net Revenues of the System at any time be insufficient to pay the principal of and interest on the Series 2022 Bond as the same become due, then the Issuer shall advance from any funds available therefor, or, if necessary, levy taxes upon all taxable property in the Issuer, subject to constitutional, statutory and charter tax rate limitations, such sums as may be necessary to pay said principal and interest. The Issuer shall be reimbursed for any such advance from the Net Revenues of the System subsequently received which are not otherwise pledged or encumbered by the Outstanding Ordinances or this Ordinance.

Section 9. Bondholders Rights; Receiver. The holder or holders of the Series 2022 Bond 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 Issuer, 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 Series 2022 Bond, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer 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 Issuer more particularly set forth herein and in Act 94.

The holder or holders of the Series 2022 Bond shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Series 2022 Bond and the security therefor.

Section 10. Management; Fiscal Year. The operation, repair and management of the System and the acquiring of the Project shall continue to be under the supervision and control of the City Council. The City Council may employ such person or persons in such capacity 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 System shall be operated on the basis of an operating year which shall coincide with the Issuer's fiscal year.

Section 11. Rates and Charges; No Free Service. The rates and charges for service furnished by 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. 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 Issuer.

Section 12. Funds and Accounts; Flow of Funds. The funds and accounts and the flow of funds established by the Outstanding Ordinances are hereby continued, and the applicable sections of the Outstanding Ordinances setting forth the funds and accounts and flow of funds are incorporated herein by reference as if fully set forth.

Section 13. Bond Proceeds. The proceeds of the sale of the Series 2022 Bond as received by the Issuer shall be deposited in an account separate from other money of the Issuer and held 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 SRF PROJECT 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 14. Bond Form. The Bond shall be in substantially the following form subject to such changes as may be required by the Authority:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF WAYNE

CITY OF LINCOLN PARK

WATER AND SEWER SYSTEM REVENUE BOND, SERIES 2022
(LIMITED TAX GENERAL OBLIGATION)

REGISTERED OWNER: Michigan Finance Authority

PRINCIPAL AMOUNT: _____ Dollars(\$ _____ ~

DATE OF ORIGINAL ISSUE:

The CITY OF LINCOLN PARK, County of Wayne, State of Michigan (the "Issuer"), acknowledges itself to owe and for value received hereby promises to pay, primarily out of the hereinafter described Net Revenues of the Issuer'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 Issuer pursuant to a Purchase Contract between the Issuer and the Authority and a Supplemental Agreement by and among the Issuer, 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 Issuer under this bond, the Authority will periodically provide to the Issuer 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 Issuer of its obligation to repay the outstanding Principal Amount actually advanced, 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 in Schedule A attached hereto and made a part hereof, as such Schedule may be adjusted if less than \$ _____ is disbursed to the Issuer 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 on ___ 1, 202_, and semiannually thereafter and principal is payable on the first day of ___ commencing ___ 1, 202_ (as identified in the Purchase Contract) and annually thereafter.

This bond may be subject to redemption prior to maturity by the Issuer 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 Issuer by the Authority (the "Authority's Depository"); (b) the Issuer 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 Issuer's deposit by 12:00 noon on the scheduled day, the Issuer 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 Issuer 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 Issuer'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 Issuer shall and hereby agrees to pay on demand only the Issuer's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.

For prompt payment of principal and interest on this bond, the Issuer has irrevocably pledged the revenues of its Water and Sewer System, including all appurtenances, extensions and improvements thereto (the "System"), after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), and a statutory lien thereon is hereby recognized and created.

This bond is a single, fully-registered, non-convertible bond in the principal sum indicated above issued pursuant to Ordinance Nos. 2016-1, 2020-1 and ___ duly adopted by the City Council of the Issuer (together, the "Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying the cost of acquiring and constructing improvements to the System.

The bonds of this issue are of equal standing and priority of lien as to the Net Revenues with the Issuer's Water and Sewer System Revenue Bond, Series 2016 (Limited Tax General Obligation), dated April 11, 2016 and the Issuer's Water and Sewer System Revenue Bond, Series 2020 (Limited Tax General Obligation), dated March 27, 2020 (collectively, the "Outstanding Bonds"). For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinances. The Issuer has reserved the right to issue additional bonds of equal standing with the bonds of this issue and the Outstanding Bonds on conditions stated in the Ordinances.

This bond is a self-liquidating bond, payable, both as to principal and interest, primarily from the Net Revenues of the System. The principal of and interest on this bond are secured by the statutory lien herein before mentioned. As additional security, the Issuer has pledged its limited tax full faith and credit for payment of the principal of and interest on the bonds of this issue, which includes the Issuer's obligation to levy taxes, if necessary, within applicable constitutional, statutory and charter tax rate limitations.

The Issuer has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of this bond, and any bonds of equal standing with this bond, the Outstanding Bonds, and any additional bonds of equal standing with the Outstanding Bonds, as and when the same shall become due and payable, and to maintain a bond redemption fund therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinances.

This bond is transferable only upon the books of the Issuer by the registered owner in person or the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the transfer agent, duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the Ordinances, and upon payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the Issuer, by its City Council, has caused this bond to be executed with the manual signatures of its Mayor and its Clerk and the corporate seal to be impressed hereon, all as of the Date of Original Issue.

CITY OF LINCOLN PARK

By _____
Its Mayor

(Seal)

Countersigned:

Its _____
Clerk