

VILLAGE OF ELBERTA
ORDINANCE NO. 41

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO THE WATER SUPPLY SYSTEM SERVING THE VILLAGE OF ELBERTA; TO PROVIDE FOR THE ISSUANCE AND SALE OF JUNIOR LIEN REVENUE BONDS TO PAY THE COST THEREOF; TO PRESCRIBE THE FORM OF THE JUNIOR LIEN BONDS; 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 JUNIOR LIEN BONDS; TO PROVIDE FOR SECURITY FOR THE JUNIOR LIEN BONDS; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE JUNIOR LIEN BONDS IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE JUNIOR LIEN BONDS AND THE SYSTEM.

THE VILLAGE OF ELBERTA ORDAINS:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this ordinance, the following words and terms as used in this ordinance shall have the meanings assigned in this section, unless the context or use clearly indicates another or different meaning or intent.

The word “acquired,” as used in this ordinance, shall be construed to include acquisition by purchase, construction or by any other method.

“Act 94” means Act 94, Public Acts of Michigan, 1933, as amended.

“Additional Junior Lien Bonds” shall mean additional junior lien bonds issued pursuant to Section 14 of this ordinance.

“Authority” means the Michigan Finance Authority.

“Authorized Officer” means the President, Clerk, or Treasurer of the Village.

“Bonds” or “Senior Lien Bonds” means any Bonds or series of Bonds so designated and payable from Net Revenues, which are secured by a statutory first lien on the Net Revenues established by the Prior Ordinance and which are senior and superior in all respects with respect to the Net Revenues to any Junior Lien Bonds secured by the statutory second lien established by this ordinance, together with any additional Bonds of equal standing thereafter issued.

“Depository Bank” shall mean a financial institution which is qualified to serve as depository bank and designated by resolution of the Issuer for deposit of all funds belonging to or associated with the System.

“EGLE” means the Michigan Department of Environment, Great Lakes and Energy, or any successor agency which administers loans from the State of Michigan Drinking Water State Revolving Fund (DWSRF) program.

“Engineer” shall mean Fleis & Vandenbrink, Traverse City, Michigan.

“Fiscal Year” shall mean the fiscal year of the Issuer and the operating year of the System, commencing March 1 and ending on the last day of February of the subsequent year, as such year may be changed from time to time.

“Issuer” or “Village” shall mean the Village of Elberta, County of Benzie, State of Michigan.

“Junior Lien Bonds” means any Bonds or series of Bonds (including the Series 2022B Bonds) payable from Net Revenues, after satisfaction of any requirements for funding the Redemption Account, and which are secured by a statutory second lien on the Net Revenues and are junior and subordinate in all respects with respect to the Net Revenues to any outstanding Senior Lien Bonds and any Bonds hereafter issued secured by the statutory first lien established by the Prior Ordinance.

“Prior Ordinance” shall mean Ordinance No. 35 and Ordinance No. 40 pursuant to which the Senior Lien Bonds were issued.

“Project” shall mean the acquisition and construction of improvements and repairs to the Issuer’s Water Supply System including, but not limited to, replacement of aged water mains and service lines, meter hookup, flushing and testing, installation of a new well and well house, and abandonment of an existing well, together with associated appurtenances and attachments and payment of legal, engineering, financial and other incident expenses.

“Purchase Contract” means the Purchase Contract(s) to be entered into between the Authority and the Issuer relating to the purchase by the Authority of the Series 2022B Bonds.

“Revenues” and “Net Revenues” shall mean the revenues and net revenues of the Issuer 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.

“Senior Lien Bonds” shall mean the Issuer’s outstanding Water Supply System Revenue Bond, Series 2018A (Taxable) and Water Supply System Revenue Bond, Series 2018B (Taxable), each dated as of August 15, 2018, and the Water Supply System Revenue Bonds, Series 2022A (Taxable), all as authorized to be issued pursuant to the Prior Ordinance, and any additional bonds issued that are senior in standing and priority of lien with the Junior Lien Bonds.

“Series 2022B Bonds” shall mean the Issuer’s Water Supply System Junior Lien Revenue Bonds, Series 2022B, in the principal amount of not to exceed Two Million Dollars (\$2,000,000) authorized to be issued pursuant to Sections 4 and 5 of this ordinance.

“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 or Junior Lien Bonds and the principal and redemption premium, if any, on the Bonds or Junior Lien 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 or Junior Lien Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds or Junior Lien Bonds for redemption shall be given.

“System” shall mean the Issuer’s Water Supply System 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.

“Transfer Agent” shall mean the transfer agent and bond registrar for the Junior Lien Bonds as appointed from time to time by the Issuer as provided in Section 6 of this ordinance and who or which shall carry out the duties and responsibilities as set forth in Section 6 of this ordinance.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be necessary for the public health and welfare of the Village to acquire and construct the Project in accordance with the plans and specifications prepared by the Engineer for the Project and on file with the Issuer, 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 Michigan Finance 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.

Section 3. Costs; Useful Life. The total costs of the Project is estimated to be not less than Two Million Dollars (\$2,000,000) 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 forty (40) years.

Section 4. Payment of Costs; Bonds Authorized; Effect of Prior Ordinance. To pay part of the costs of acquiring and constructing the Project, including legal, engineering, financial and other expenses incident to the issuance and sale of the Series 2022B Bonds, it is hereby determined that the Issuer borrow the sum of not-to-exceed Two Million Dollars (\$2,000,000) and that revenue bonds be issued therefor pursuant to the provisions of Act 94. The remaining cost of the Project, if any, shall be defrayed from Issuer funds on hand 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 2022B Bonds 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 revenue bonds of subordinate lien to the Senior Lien Bonds.

Section 5. Bond Details. The Series 2022B Bonds of the Issuer, to be designated as the WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BONDS, SERIES 2022B, with such additional or other designations as determined by an Authorized Officer, are authorized to be issued in one or more series in the aggregate principal sum of not to exceed Two Million Dollars (\$2,000,000) as finally determined by order of EGLE,, and may be issued on either a tax-exempt or taxable basis as determined by an Authorized Officer, 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 2022B Bonds. The Series 2022B Bonds shall be payable primarily out of the Net Revenues, as set forth more fully in Section 7 hereof, provided that the Series 2022B Bonds shall be subordinate to the prior lien with respect to the Net Revenues in favor of the Senior Lien Bonds. Each series of the Series 2022B Bonds 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 the order of EGLE at the time of sale of the Series 2022B Bonds and approved by the Authority and an Authorized Officer. Principal installments of each series of the Series 2022B Bonds shall be payable on April 1 of the years 2023 to 2062, inclusive, or such other payment dates as otherwise determined by an Authorized Officer, provided that the final principal payment of the Series 2022B Bonds shall be due and payable within forty (40) years of the date of issuance. Each series of the Series 2022B Bonds shall bear interest at a rate or rates to be determined by an Authorized Officer at the time of execution of the Purchase Contract, payable semiannually beginning April 1, 2023 or on such other dates as determined in the Purchase Contract. In addition, if required by the Authority, the Series 2022B Bonds will bear additional interest, under the terms required by the Authority, in the event of a default by the Issuer in the payment of principal or interest on the Series 2022B Bonds when due.

The principal amount of the Series 2022B Bonds is expected to be drawn down by the Issuer periodically, and interest on each installment of the principal amount shall accrue from the date such principal installment is drawn down by the Issuer. Principal installments of the Series 2022B Bonds will be subject to prepayment prior to maturity as permitted by the Authority and approved by an Authorized Officer.

The Series 2022B Bonds shall not be convertible or exchangeable into more than one fully-registered bond per series. Principal of and interest on the Series 2022B Bonds shall be payable as provided in the Series 2022B Bonds as executed.

The President and Village Clerk are authorized to execute the Series 2022B Bonds by manual or facsimile signature. At least one signature on the Series 2022B Bonds shall be a manual signature. Any Authorized Officer is hereby authorized to deliver the Series 2022B Bonds in accordance with the delivery instructions of the Authority.

Section 6. Bond Registration and Transfer. The Transfer Agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Series 2022B Bonds, which shall at all times be open to inspection by the Issuer. The Transfer Agent shall transfer or cause to be transferred on said books any bond presented for transfer, as hereinafter provided and subject to such reasonable regulations as it may prescribe.

The Series 2022B Bonds may be transferred upon the books required to be kept by the Transfer Agent pursuant to this Section, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for transfer, 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 Transfer Agent shall record such transfer on the registration books and shall register such transfer on the registration grid attached to the Series 2022B Bond. At the time of such transfer the Transfer Agent shall note on the Series 2022B Bond the outstanding principal amount thereof at the time of such transfer. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of, or exchange any bond during a period beginning at the opening of business fifteen days before the day of the mailing of a notice of prepayment of the bond or installments thereof selected for redemption and ending at the close of business on the day of that mailing, or (ii) to register the transfer of or exchange the bond or portion thereof so selected for prepayment. In the event any bond is called for prepayment in part, the transfer agent upon surrender of such bond shall note on the bond the principal amount prepaid and shall return the bond to the registered owner thereof together with the prepayment amount on the prepayment date.

The Issuer's Treasurer is hereby appointed to act as Transfer Agent with respect to the Series 2022B Bonds. If and at such time any Series 2022B Bond is transferred to or held by any registered owner other than the Authority, the Issuer by resolution may appoint a bank or trust company qualified under Michigan law to act as transfer agent and bond registrar with respect to the bond, and the Issuer may thereafter appoint a successor Transfer Agent upon sixty (60) days notice to the registered owner of the bond.

Section 7. Payment of Series 2022B Bonds; Security; Priority of Lien. Principal of and interest on the Series 2022B Bonds shall be payable primarily 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 junior and subordinate to the lien of the outstanding Senior Lien Bonds created by the Prior Ordinance and to any Bonds hereafter issued, 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 Junior Lien Bonds, including the Series 2022B Bonds, then outstanding, principal and interest, 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 for the Series 2022B Bonds, the statutory lien shall be terminated with respect to the Series 2022B Bonds, the holders of the Series 2022B Bonds shall have no further rights under this ordinance except for payment from the deposited funds, and the Series 2022B Bonds shall no longer be considered to be outstanding under this ordinance.

If required by the Authority, as additional security for repayment of the Series 2022B Bonds, the Issuer 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 2022B Bonds, and the Issuer hereby authorizes the Authorized Officers to approve, execute and deliver a Revenue Sharing Pledge Agreement between the Issuer 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 2022B Bonds are not made in accordance with this ordinance. 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 this ordinance or the Prior Ordinance.

Upon payment by the Issuer of all outstanding principal of and interest on the Series 2022B Bonds, the registered owners thereof shall deliver the Series 2022B Bonds to the Issuer for cancellation.

Section 8. Bond Form. The Series 2022B Bonds shall be in substantially the following form subject to such changes, including references to additional security, as may be required by the Authority:

[FORM OF BOND TO BE COMPLETED AFTER BOND SALE]

UNITED STATES OF AMERICA
 STATE OF MICHIGAN
 COUNTY OF BENZIE

VILLAGE OF ELBERTA
 WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BOND
 SERIES 2022B
 DWSRF # _____

Registered Owner: Michigan Finance Authority

Principal Amount: [amount]

Date of Original Issue: [date]

The VILLAGE OF ELBERTA, County of Benzie, State of Michigan (the “Village” or the “Issuer”), for value received, acknowledges itself to owe, and for value received hereby promises to pay, primarily out of the hereinafter described Net Revenues of the Village’s Water Supply 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 Village pursuant to a Purchase Contract between the Village and the Authority and a Supplemental Agreement by and among the Village, 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 prior thereto as hereinafter provided.

During the time the Principal Amount is being drawn down by the Village under this bond, the Authority will periodically provide to the Village 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 Village 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 I attached hereto and made a part hereof, as Schedule I may be adjusted if less than \$[amount] is disbursed to the Village, or if the Village prepays a portion of the Principal Amount as provided below with the prior written consent of the Authority, with interest on the principal installments from the date each installment is delivered to the holder hereof until paid at the rate of [rate]% per annum. Interest is first payable on [date], and semiannually thereafter, and principal is payable on the first day of [month] commencing [date] (as identified in the Purchase Contract executed for sale of this bond) and annually thereafter.

Principal installments of this bond are subject to prepayment by the Village 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, as long as the Authority is the owner of this bond, (a) this bond is payable as to principal, premium, if any, and interest at [Bank], or at such other place as shall be designated in writing to the Village by the Authority (the "Authority's Depository"); (b) the Village 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 Village's deposit by 12:00 noon on the scheduled day, the Village 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 Village 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 Village'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 Village shall and hereby agrees to pay on demand only the Village'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 Village has irrevocably pledged the revenues of its Water Supply 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, subject to the lien in favor of the Village's Water Supply System Revenue Bond, Series 2018A (Taxable) and Water Supply System Revenue Bond, Series 2018B (Taxable), dated as of August 15, 2018, and the Water Supply System Revenue Bonds, Series 2022A (Taxable) [and the Water Supply System Revenue Bonds, Series 2022A (Taxable)]. The Village has reserved the right to issue additional bonds of prior and senior or equal standing and priority of lien with this bond as to the Net Revenues.

This bond is a single, fully-registered, non-convertible bond issued in the Principal Amount pursuant to Ordinance No. [XX] duly adopted by the Village Council of the Village (the "Ordinance"), 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.

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 superior and equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinance. The Ordinance is on file at the office of the Village Clerk and reference is made to the Ordinance and any and all supplements thereto and modifications and amendments thereof, if any, and to Act 94 for a more complete description of the pledges and covenants securing this bond, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the registered owner of this bond with respect thereto and the terms and conditions upon which this bond is issued and may be issued thereunder.

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 second lien hereinbefore mentioned. [As additional security, the Village has pledged certain taxes collected by the State of Michigan and returned to the Village pursuant to a revenue sharing pledge agreement as further described in the Ordinance.]

The Village 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 principal of and interest on the bonds payable from the Net Revenues of the System, as and when the same shall become due and payable, 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 Ordinance.

This bond is transferable only upon the books of the Village 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 Village, duly executed by the registered owner or the registered owner's attorney, 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 Ordinance, 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 Village, by its Village Council, has caused this bond to be executed by its President and its Village Clerk and the corporate seal or a facsimile to be impressed or printed hereon, all as of the Date of Original Issue.

VILLAGE OF ELBERTA

By [President to sign bond]
President

(seal)

Countersigned:

Its [Village Clerk to sign bond]
Village Clerk

Name of Issuer: Village of Elberta
 Project No.: DWSRF _____
 Approved Amt: \$[amount]
 Loan Amount Forgiven: \$[amount]
 Loan Amount to be Repaid: \$[amount]

SCHEDULE I

Based on the schedule provided below unless revised as provided in this paragraph, repayment of principal of the bond shall be made until the full amount advanced to the Issuer is repaid. In the event the Order of Approval issued by the Department of Environment, Great Lakes and Energy (the "Order") approves a principal amount of assistance less than the amount of the bond delivered to the Authority, the Authority shall only disburse principal up to the amount stated in the Order. In the event (1) that the payment schedule approved by the Issuer and described below provides for payment of a total principal amount greater than the amount of assistance approved by the Order, or (2) that less than the principal amount of assistance approved by the Order is disbursed to the Issuer by the Authority, or (3) that any portion of the principal amount of assistance approved by the Order and disbursed to the Issuer is forgiven pursuant to the Order, the Authority shall prepare a new payment schedule which shall be effective upon receipt by the Issuer.

Due Date	Amount of Principal Installment Due
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Interest on the bond shall accrue on that portion of principal disbursed by the Authority to the Issuer which has not been forgiven pursuant to the Order from the date such portion is disbursed, until paid, at the rate of [interest rate]% per annum, payable [date], and semi-annually thereafter.

The Issuer agrees that it will deposit with [Bank], or at such other place as shall be designated in writing to the Issuer by the Authority (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.

* Not to exceed amount. Loan reductions at close out will result in a proportional decrease.

Section 9. Management and Operation of the System; Fiscal Year. The operation, repair and management of the System shall continue to be under the supervision and control of the Village Council. The Village Council may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System. The Village Council 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 fiscal year for operating the System shall be the Fiscal Year.

Section 10. 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 and are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the System in good repair and working order, to provide for the payment of the principal of and interest on the bonds payable from the Net Revenues of the System as the same become due and payable, and the maintenance of the reserves, if any, therefor; and to provide for all other obligations, expenditures and funds for the System required by law, the Prior Ordinance and this ordinance. No free service shall be furnished by the System to any individual, firm or corporation, public or private or to any public agency or instrumentality, including the Issuer.

Section 11. Funds and Accounts; Flow of Funds; Junior Lien Bond and Interest Redemption Account. All funds belonging to the System and all Revenues of the System shall continue to be set aside as collected and credited to the Receiving Account established by the Prior Ordinance (the "Receiving Account"), except as provided in this ordinance. The Revenues credited to the Receiving Account are pledged for the purposes of the funds and accounts established by the Prior Ordinance and this ordinance and shall be transferred or debited from the Receiving Account periodically in the manner and at the times and in the order of priority specified in the Prior Ordinance and this ordinance.

Funding Existing Funds and Accounts. Out of the Revenues in the Receiving Account there shall be transferred and debited the amounts required by the Prior Ordinance to be deposited into the existing Operation and Maintenance Account, the existing Bond and Interest Redemption Account (including the Bond Reserve Account), and the Repair, Replacement And Improvement Account created pursuant to the Prior Ordinance.

Junior Lien Bond and Interest Redemption Account. There is hereby established and there shall be maintained a separate depository account designated JUNIOR LIEN BOND AND INTEREST REDEMPTION ACCOUNT (the "Junior Lien Redemption Account"). Except as otherwise provided herein, the moneys on deposit therein from time to time shall be used for the purpose of paying the principal of and interest on any Junior Lien Bonds.

Out of the Revenues remaining in the Receiving Account, after provision for the Operation and Maintenance Account and the existing Bond and Interest Redemption Account (including the Bond Reserve Account), there shall be set aside periodically in the Junior Lien Redemption Account a sum sufficient to provide for the payment when due of the current

principal of and interest on the Junior Lien Bonds, including any amounts necessary to maintain any reserve account established within the Junior Lien Redemption Account.

The amount to be set aside for the payment of principal and interest on any date shall not exceed the amount which, when added to the money on deposit in the Junior Lien Redemption Account, including investment income thereon and on any bond reserve account which may be established on a future date, is necessary to pay principal and interest due on the Revenue Bonds on the next succeeding principal payment date.

The Issuer may establish separate bond reserve accounts in the Junior Lien Redemption Account.

Section 12. Bond Proceeds. The proceeds of the sale of each series of the Series 2022B Bonds as received by the Issuer shall be deposited in one or more separate accounts 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 as the 2022 WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BONDS CONSTRUCTION ACCOUNT (the "Construction Account") in the Depository Bank. Moneys in the Construction Account shall be applied solely in payment of the cost of the Project and any engineering, legal and other expenses incident thereto and to the financing thereof.

Section 13. Bondholders' Rights; Receiver. The holder or holders of the Bonds or Junior Lien Bonds 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 upon the Bonds or the Junior Lien Bonds, 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 Bonds and the Junior Lien Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the Junior Lien Bonds and the security therefor.

Section 14. Additional Junior Lien Bonds. The Issuer may issue Additional Junior Lien Bonds of equal standing with the Junior Lien Bonds for the following purposes and subject to the following conditions:

(a) To complete the Project in accordance with the plans and specifications therefor. Such bonds shall not be authorized unless the engineers in charge of construction shall execute a certificate evidencing the fact that additional funds are needed to complete the Project in accordance with the plans and specifications therefor and stating the amount that will be required

to complete the Project. If such certificate shall be so executed and filed with the Issuer, it shall be the duty of the Issuer to provide for and issue additional revenue bonds in the amount stated in said certificate to be necessary to complete the Project in accordance with the plans and specifications plus an amount necessary to issue such bonds or to provide for part or all of such amount from other sources.

(b) For subsequent repairs, extensions, enlargements and improvements to the System or for the purpose of refunding part or all of the Junior Lien Bonds then outstanding and paying costs of issuing such additional Junior Lien Bonds. Junior Lien Bonds for such purposes shall not be issued pursuant to this subparagraph (b) unless the Adjusted Net Revenues of the System for the then last two (2) preceding twelve-month operating years or the Adjusted Net Revenues for the last preceding twelve-month operating year, if the same shall be lower than the average, shall be equal to at least one hundred percent (100%) of the maximum amount of principal and interest thereafter maturing in any operating year on the then outstanding Senior Lien Bonds, Junior Lien Bonds and on the Additional Junior Lien Bonds then being issued. If the additional Junior Lien Bonds are to be issued in whole or in part for refunding outstanding Junior Lien Bonds, the annual principal and interest requirements shall be determined by deducting from the principal and interest requirements for each operating year the annual principal and interest requirements of any Junior Lien Bonds to be refunded from the proceeds of the additional Junior Lien Bonds. For purposes of this subparagraph (b) the Issuer may elect to use as the last preceding operating year any operating year ending not more than sixteen months prior to the date of delivery of the additional Junior Lien Bonds and as the next to the last preceding operating year, any operating year ending not more than twenty-eight months prior to the date of delivery of the additional Junior Lien Bonds. Determination by the Issuer as to existence of conditions permitting the issuance of additional Junior Lien Bonds shall be conclusive. No additional Junior Lien Bonds of equal standing as to the Net Revenues of the System shall be issued pursuant to the authorization contained in this subparagraph if the Issuer shall then be in default in making its required payments to the Operation and Maintenance Fund or the Redemption Fund.

(c) For refunding a part or all of the Junior Lien Bonds then outstanding and paying costs of issuing such additional Junior Lien Bonds including deposits which may be required to be made to the bond reserve account, if any, for such Junior Lien Bonds. No additional Junior Lien Bonds shall be issued pursuant to this subsection unless the maximum amount of principal and interest maturing in any operating year after giving effect to the refunding shall be less than the maximum amount of principal and interest maturing in any operating year prior to giving effect to the refunding.

Section 15. Covenant Regarding Tax Exempt Status of the Series 2022B Bonds. If the Bonds are issued on a tax-exempt basis, the Issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Series 2022B Bonds from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended, including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Series 2022B Bonds proceeds and moneys deemed to be Bond proceeds.

Section 16. Negotiated Sale; Application to EGLE and Authority; Execution of Documents. The Issuer determines that it is in the best interest of the Issuer to negotiate the sale

of the Series 2022B Bonds to the Authority because the Drinking Water State Revolving Fund financing program provides significant interest savings to the Issuer compared to competitive sale in the municipal bond market. The Authorized Officers are hereby authorized to make application to the Authority and to EGLE for placement of the Series 2022B Bonds with the Authority. The actions taken by the Authorized Officers with respect to the Series 2022B Bonds prior to the adoption of this ordinance are ratified and confirmed. The Authorized Officers are each severally authorized to execute and deliver the Purchase Contract, the Supplemental Agreement by and among the Village, the Authority and the State of Michigan acting through the Department of Environment, Great Lakes and Energy, the Revenue Sharing Pledge Agreement and the Issuer's Certificate. Any Authorized Officer is further authorized to execute and deliver such contracts, documents and certificates as are necessary or advisable to qualify the Series 2022B Bonds for the Drinking Water State Revolving Fund. Prior to the delivery of the Series 2022B Bonds to the Authority, any Authorized Officer is hereby authorized to make such changes to the form of the Series 2022B Bonds contained in this ordinance as may be necessary to conform to the requirements of Act 227, Public Acts of Michigan 1985, as amended ("Act 227"), including, but not limited to changes in the principal maturity and interest payment dates and references to additional security required by Act 227.

The representation of the Issuer by Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), as bond counsel is hereby affirmed, notwithstanding the representation by Miller Canfield of the Authority in connection with the Drinking Water State Revolving Fund program which may include advising the Authority with respect to this borrowing.

Section 17. Approval of Bond Details; Authorization of Other Actions. The Authorized Officers are each hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing are authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, provided that the principal amount of Series 2022B Bonds issued shall not exceed the principal amount authorized in this ordinance, the interest rate per annum on the Series 2022B Bonds shall not exceed one and seven-eighths percent (1.875%) per annum, and the Series 2022B Bonds shall mature in not more than forty (40) annual installments.

The Authorized Officers are each hereby authorized and directed to take all other actions necessary or advisable to enable the sale and delivery of the Series 2022B Bonds as contemplated herein, including applying for and paying the related fees for ratings and making such other filings with and paying related fees to any parties.

Section 18. Approval by the Michigan Department of Treasury. The President or Village Clerk are each authorized and directed to take all other actions necessary or advisable, and to make such other filings with the Michigan Department of Treasury or other parties, to seek long-form application for prior approval and necessary waivers to enable the sale and delivery of the Series 2022B Bonds as contemplated herein. Baker Tilly Municipal Advisors, LLC, or Miller Canfield, or the President, Clerk and Treasurer are each hereby severally designated responsibility on behalf of the Issuer to make such filings with the Michigan Department of

Treasury or other parties, to seek long-form application for prior approval and necessary waivers, including an application for exemption of the investment grade rating requirement, to enable the sale and delivery of the Series 2022B Bonds as contemplated herein.

Section 19. Conflict and Severability. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed, and each section of this ordinance and each subdivision of any section hereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this ordinance.

Section 20. Paragraph Headings. The paragraph headings in this ordinance are furnished for convenience of reference only and shall not be considered to be a part of this ordinance.

Section 21. Publication and Recordation. This Ordinance shall be published in full in the *Benzie County Record Patriot*, a newspaper of general circulation in the Issuer, qualified under State law to publish legal notices, promptly after its adoption, and the same shall be recorded in the Ordinance Book of the Issuer and such recording authenticated by the signatures of the President and the Village Clerk.

Section 22. Effective Date. This Ordinance is hereby determined by the Village Council to be immediately necessary for the preservation of the peace, health and safety of the Issuer and shall be in full force and effect from and after its passage and publication as required by law.

Passed and adopted by the Village of Elberta, County of Benzie, State of Michigan, on JUNE 16, 2022.



(Seal)

Jennifer S. Williams
President

Attest:

[Signature]

Village Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the Village Council of the Village of Elberta, County of Benzie, State of Michigan, at a Regular meeting held on JUNE 16, 2022, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Open Meetings Act.

I further certify that the following Members were present at said meeting: Jennifer Wilkins; Ken Holmes; Bill Soper; Ryan Fiebing
Emily Votruba and that the following Members were absent: 0 NONE.

I further certify that Member JENNIFER WILKINS moved adoption of said Ordinance, and that said motion was supported by Member Bill Soper.

I further certify that the following Members voted for adoption of said Ordinance: JENNIFER WILKINS; KEN HOLMES; BILL SOPER; RYAN FIEBING
EMILY VOTRUBA and that the following Members voted against adoption of said Ordinance: 0 NONE.

I further certify that said Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the President and the Village Clerk.


Village Clerk