

Great Lakes Water Authority

Resolution 2023-117

RE: Approval of First Supplemental Sale Order of Chief Executive Officer of the Great Lakes Water Authority Amending Sale Order of Finance Director of the City of Detroit with respect to \$370,000,000 City of Detroit Sewage Disposal System Revenue Refunding Senior Lien Bonds (Tax-Exempt Floating LIBOR Notes), Series 2006(D)

By Board Member: Brian Baker

- Whereas** The Great Lakes Water Authority (the “Authority”) was formed by the City of Detroit, County of Wayne, State of Michigan (the “City”), the Charter County of Wayne, State of Michigan, the County of Oakland, State of Michigan and the Charter County of Macomb, State of Michigan, pursuant to Act No. 233, Public Acts of Michigan, 1955, as amended, in order to lease the Leased Sewer Facilities and the Leased Water Facilities and to operate the Regional Sewer System and the Regional Water System and maintain the Leased Sewer Facilities and Leased Water Facilities (all as defined in the Master Bond Ordinance, as hereinafter defined) pursuant to separate leases of the respective facilities, between the City and the Authority (the lease pertaining to the Leased Sewer Facilities hereinafter referred to as the “Lease”); and
- Whereas** Pursuant to the Lease, the Authority assumed all of the City’s obligations related to the Regional Sewer System, including, but not limited to, the City’s obligations to pay debt service on all revenue bonds issued or refunded by the City on its own or through its Department of Water and Sewerage (“DWSD”) pursuant to Act No. 94, Public Acts of Michigan, 1933, as amended, which bonds (referred to herein as the “DWSD Sewer Bonds”, and as more fully defined in the Master Bond Ordinance) were issued to finance or refinance the acquisition and installation of improvements to the Sewer System (as defined in the Master Bond Ordinance); and
- Whereas** Pursuant to Resolution No. 2015-10-03 adopted by the Board of Directors of the Great Lakes Water Authority (the “Authority”) on October 7, 2015, the Authority Board approved and adopted Master Bond Ordinance No. 2015-02 (as subsequently amended through the date hereof, the “Master Bond Ordinance”), which authorizes the issuance by the Authority of Sewage Disposal System Revenue Bonds; and
- Whereas** As provided in Section 402 of the Master Bond Ordinance, the Master Bond Ordinance amends, restates and supersedes the DWSD Indenture and Ordinance No. 18-01 (each as defined in the Master Bond Ordinance), with respect to the DWSD Sewer Bonds assumed by the Authority, and constitutes a contract between the Authority and the Holders of the DWSD Sewer Bonds; and
- Whereas** The Master Bond Ordinance provides further for the assignment by the City to the Authority and the assumption by the Authority from the City all rights and

obligations of the City under the DWSD Sewer Bonds and accordingly, that the Authority is the successor issuer of the DWSD Sewer Bonds; and

Whereas The DWSD Sewer Bonds include the Sewage Disposal System Revenue Refunding Senior Lien Bonds (Tax-Exempt Floating LIBOR Notes), Series 2006(D), issued by the City on December 14, 2006 (the “2006(D) Bonds”); and

Whereas The 2006(D) Bonds were issued pursuant to the authorization under Ordinance No. 18-01, as amended, restated and superseded by the Master Bond Ordinance, and a Sale Order of Finance Director of the City of Detroit with respect to \$370,000,000 City of Detroit Sewage Disposal System Revenue Refunding Senior Lien Bonds (Tax-Exempt Floating LIBOR Notes), Series 2006(D), dated November 29, 2006 (the “2006(D) Sale Order”) approving the sale of the 2006(D) Bonds and determining and establishing, among other things, the aggregate principal amount, purchase price, interest rates and maturities for the 2006(D) Bonds and the designations and types of 2006(D) Bonds to be issued; and

Whereas Pursuant to the 2006(D) Sale Order, the interest rate per annum on the 2006(D) Bonds is calculated based on a U.S. Dollar London Interbank Offered Rate (“LIBOR”) benchmark rate, as indicated and described in the 2006(D) Sale Order; and

Whereas To address the permanent cessation of certain tenors of LIBOR, Congress enacted the Adjustable Interest Rate (LIBOR) Act (“AIRLA”) on March 15, 2022, to identify benchmark rates based on the Secured Overnight Financing Rate (“SOFR”) that will replace LIBOR in certain financial contracts that either lack or contain insufficient LIBOR fallback provisions; and

Whereas On December 16, 2022, the Board of Governors of the Federal Reserve System adopted final rule 12 C.F.R. Part 253, “Regulation Implementing the Adjustable Interest Rate (LIBOR) Act (Regulation ZZ)” (“Rule 253”), which, among other things, provides guidance for implementing AIRLA so that the benchmark rate for existing “tough legacy contracts” that either lack or contain insufficient LIBOR fallback provisions will be converted by operation of law to SOFR, along with a spread adjustment, upon the cessation of LIBOR; and

Whereas The three-month LIBOR tenor is expected to cease on the first London banking day after June 30, 2023, or such other date that the Board of Governors of the Federal Reserve System determines the three-month LIBOR tenor will cease to be published or cease to be representative (the “LIBOR Replacement Date”); and

Whereas Section 1102(7) of the Master Bond Ordinance provides that the Authority may, with the consent of the Trustee in reliance upon an opinion of Bond Counsel (each as defined in the Master Bond Ordinance), but without the consent of the Bondholders, adopt a Supplemental Ordinance (defined herein below) to cure any ambiguity or defect or inconsistent provision in the Master Bond Ordinance or to

insert such provisions clarifying matters or questions arising under the Master Bond Ordinance as are necessary or desirable in the event any such modifications are not contrary to or inconsistent with the Master Bond Ordinance as theretofore in effect; and

Whereas The Master Bond Ordinance defines “Supplemental Ordinance” as a Series Ordinance or other Ordinance supplemental to the Master Bond Ordinance and authorized pursuant to Section 1102 or 1103; and

Whereas The definition of “Ordinance” in the Master Bond Ordinance includes a Sale Order (as defined in the Master Bond Ordinance) of the Chief Executive Officer or other Authorized Officer (as defined in the Master Bond Ordinance) authorizing the issuance and sale of any Series of Bonds, including bonds, such as the 2006(D) Bonds, issued under Ordinance No. 18-01; and

Whereas Neither the 2006(D) Sale Order nor the Master Bond Ordinance, as successor to Ordinance No. 18-01 which authorized the 2006(D) Sale Order, include adequate fallback provisions identifying use of a clearly defined or practicable benchmark rate to replace LIBOR upon the LIBOR Replacement Date, and therefore constitute a “tough legacy contract” under AIRLA and Rule 253; and

Whereas The 2006(D) Sale Order constitutes an Ordinance which may be amended by a Supplemental Ordinance in the form of a First Supplemental Sale Order, pursuant to the terms of the Master Bond Ordinance; and

Whereas The Board of Directors of the Authority deems it necessary to authorize an Authorized Officer to execute a First Supplemental Sale Order to amend Sections 205 and 206 of the 2006(D) Sale Order (collectively, the “Supplement”) in order to memorialize the required conversion by operation of law of the interest rate on the 2006(D) Bonds from a LIBOR-based benchmark rate to a replacement benchmark rate based on SOFR, plus a spread adjustment, in accordance with AIRLA and Rule 253, as described herein; and

Whereas In accordance with Section 1102(7) of the Master Bond Ordinance and the covenants and agreements contained in Exhibit A to the 2006(D) Sale Order, U.S. Bank Trust Company, National Association, as Trustee, has consented to the Supplement contemplated herein; and

Whereas The Articles of Incorporation of the Authority provide that at least 5 of the 6 members of the Authority Board must vote to approve the authorization for a Sale Order as described herein.

Now, Therefore Be It:

Resolved That the Supplement, in the form presented to this meeting and attached hereto as Exhibit A, is approved, and an Authorized Officer is authorized to execute the Supplement in the form approved; **And Be it Further**

Resolved That all other terms and provisions of the 2006(D) Sale Order shall remain in full force and effect; **And Be it Further**

Resolved That an affirmative vote of at least 5 members of the Authority Board is necessary for the passage of this Resolution.

Adopted by the Great Lakes Water Authority Board on: April 26, 2023

EXHIBIT A

First Supplemental Sale Order of Chief Executive Officer of the Great Lakes Water Authority Amending Sale Order of Finance Director of the City of Detroit with respect to \$370,000,000 City of Detroit Sewage Disposal System Revenue Refunding Senior Lien Bonds (Tax-Exempt Floating LIBOR Notes), Series 2006(D)

WHEREAS, pursuant to Resolution No. 2015-10-03 adopted by the Board of Directors of the Great Lakes Water Authority (the “Authority”) on October 7, 2015, the Authority Board approved and adopted Master Bond Ordinance No. 2015-02 (as subsequently amended through the date hereof, the “Master Bond Ordinance”), which authorizes the issuance by the Authority of Sewage Disposal System Revenue Bonds; and

WHEREAS, pursuant to the Master Bond Ordinance and Resolution No. 2023-____ adopted by the Authority Board on _____, 2023 (“Resolution No. 2023-____”), the Authority Board approved certain amendments (collectively, the “Supplement”) to Sections 205 and 206 of the 2006(D) Sale Order (as defined in Resolution No. 2023-____) in order to memorialize the required conversion by operation of law of the interest rate on the 2006(D) Bonds from a LIBOR-based benchmark rate to a replacement benchmark rate based on the Secured Overnight Financing Rate (“SOFR”), plus a spread adjustment, in accordance with AIRLA and Rule 253 (all as defined in Resolution No. 2023-____), as described herein, and authorized an Authorized Officer to execute the Supplement; and

WHEREAS, this instrument (this “First Supplemental Sale Order”) constitutes the Supplement and is a Sale Order as defined in the Master Bond Ordinance with respect to the 2006(D) Bonds (as defined in Resolution No. 2023-____) and constitutes the exercise of the Authority therein granted to the Chief Executive Officer.

NOW, THEREFORE, THE CHIEF EXECUTIVE OFFICER HEREBY ORDERS ON BEHALF OF THE GREAT LAKES WATER AUTHORITY AS FOLLOWS:

Section 1. Definitions. Except as otherwise provided in this First Supplemental Sale Order, all terms which are defined or incorporated by reference shall have the same meanings, respectively, in this First Supplemental Sale Order as such terms are given in the Master Bond Ordinance.

- a. “Adjusted Term SOFR Rate” means, with respect to any Interest Period, an interest rate per annum equal to (i) the Term SOFR in effect for such Interest Period plus (ii) the SOFR Adjustment.
- b. “Calculation Agent” means the Transfer Agent.
- c. “Interest Determination Date” means the date that is two (2) U.S. Government Securities Business Days prior to each Interest Rate Adjustment Date.

d. “Interest Payment Date” means January 1, April 1, July 1, and October 1 of each year outstanding until maturity of the 2006(D) Bonds, as more fully described in the Section 206 of the 2006(D) Sale Order, as amended herein.

e. “Interest Period” means the period from and including the date of delivery of the 2006(D) Bonds (the “Closing Date”) or the most recent Interest Payment Date to, but excluding, the next succeeding Interest Payment Date.

f. “Interest Rate” means, for the 2006(D) Bonds, the interest rate per annum as determined by the Calculation Agent on each Interest Rate Adjustment Date, calculated as follows:

$$(67\% \times \text{Adjusted Term SOFR}) \text{ plus } 0.60\%$$

g. “Interest Rate Adjustment Date” means the first day of each January, April, July, and October until the principal on the 2006(D) Bonds is paid.

h. “LIBOR Replacement Date” means the first London banking day after June 30, 2023, or such other date that the Board of Governors of the Federal Reserve System determines the three-month LIBOR tenor will cease to be published or cease to be representative.

i. “SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR administrator.

j. “SOFR Adjustment” means 0.26161% per annum.

k. “Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator thereof).

l. “Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

m. “Term SOFR” means, with respect to any Interest Period, the Term SOFR Reference Rate for a tenor comparable to an Interest Period on the day (such day, the Term SOFR Determination Day) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; *provided, however*, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

n. “Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

o. “U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Section 2. Amendment to Section 205 of 2006(D) Sale Order. The following is substituted for and in the place under the column heading “Interest Rate Per Annum” in Section 205 of the 2006(D) Sale Order:

(67% x Adjusted Term SOFR) plus 0.60%

Section 3. Amendments to Section 206 of 2006(D) Sale Order.

(a) The following is substituted for and in the place of the first paragraph of Section 206 of the 2006(D) Sale Order:

Section 206. Interest Rate. The per annum interest rate on the 2006(D) Bonds in effect during an Interest Period will be equal to the Interest Rate and interest on the 2006(D) Bonds will accrue on the outstanding principal balance of the 2006(D) Bonds.

(b) The following is substituted for and in the place of the third and fourth sentences in the second paragraph of Section 206 of the 2006(D) Sale Order:

If any Interest Rate Adjustment Date and Interest Payment Date for the 2006(D) Bonds would otherwise be a day that is not a U.S. Government Securities Business Day, such Interest Rate Adjustment Date and Interest Payment Date shall be the next succeeding U.S. Government Securities Business Day.

(c) The following is substituted for and in the place of the remainder of Section 206 of the 2006(D) Sale Order, consisting of the third paragraph through and including the ninth paragraph of the same:

The Interest Rate for each Interest Period means the rate determined in accordance with the following provisions:

(i) On each Interest Determination Date, the Calculation Agent will determine the Interest Rate to become effective on the related Interest Rate Adjustment Date.

(ii) If the Calculation Agent shall determine that Term SOFR for any Interest Period cannot be determined pursuant to the definition thereof (including because the Term SOFR Reference Rate is not available or published on a current basis), then the relevant Interest Rate for the Interest Period commencing on the Interest Rate Adjustment Date following such Interest Determination Date will be the Interest Rate in effect on such Interest Determination Date.

As soon as possible after the Interest Rate is determined on each Interest Determination Date, but in no event later than 5:00 p.m. (New York City time) on the U.S. Government Securities Business Day immediately following each Interest Determination Date, the Calculation Agent will notify the Authority, the Trustee (if an entity different and separate from the Calculation Agent) and DTC of the Interest Rate for the next Interest Period.

The amount of interest for each day that the 2006(D) Bonds are outstanding (the "Daily Interest Amount") will be calculated by dividing the Interest Rate in effect for such day by 360 and multiplying the result by the outstanding principal amount of the 2006(D) Bonds. The amount of interest to be paid on the 2006(D) Bonds for any Interest Period will be calculated by adding the Daily Interest Amount for each day in such Interest Period.

The Interest Rate on the 2006(D) Bonds will in no event be higher than the lesser of (i) 15% and (ii) the maximum rate permitted by Michigan law as the same may be modified by United States law of general application.

The Interest Rate and amount of interest to be paid on the 2006(D) Bonds for each Interest Period will be determined by the Calculation Agent. All calculations made by the Calculation Agent shall, in the absence of manifest error, be conclusive for all purposes and binding on the Authority and the Holders of the 2006(D) Bonds.

Section 4. Ratification and Rescission. The 2006(D) Sale Order, as amended by this First Supplemental Sale Order, is hereby ratified and confirmed, and the provisions of the 2006(D) Sale Order, including but not limited to the interest rate calculations provided in Section 206 of the 2006(D) Sale Order, shall remain in full force and effect until the LIBOR Replacement Date. All other orders and parts of other orders insofar as they conflict with the provisions of this order be and the same hereby are rescinded.

Section 5. Effective Date. The amendments provided herein shall take effect immediately upon the LIBOR Replacement Date.
SO ORDERED.

Suzanne R. Coffey
Chief Executive Officer
Great Lakes Water Authority

Dated: _____, 2023