

ORDINANCE NO. 2190

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A DRINKING WATER REVENUE BOND, SERIES 2023, OF THE CITY OF CRETE, NEBRASKA, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION SEVEN HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$2,745,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE DRINKING WATER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET OR ELECTRONIC FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF CRETE, NEBRASKA, AS FOLLOWS:

Section 1. The Mayor and Council of the City of Crete, Nebraska (the “City”) hereby find and determine as follows:

- A. the City owns and operates a drinking water system which consists of structures, equipment, and processes to obtain source water, treat the source water, store water, distribute drinking water fit for human consumption, and dispose of any byproducts from the processes, said system as now existing together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the “**Drinking Water System**”;
- B. the Drinking Water System represents a revenue-producing undertaking and facility of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb, as amended, for which the City is authorized to issue revenue bonds;
- C. the City currently has outstanding no bonds, notes or other indebtedness for which the revenues of the Drinking Water System have been pledged or made security;
- D. The NDEE has approved a project of the City for its Drinking Water System consisting of the construction of a new well, transmission main, and water main replacements in several locations, and including all related work, land testing, construction change orders, and engineering fees, which has been designated as Project No. D311654 (the “**NDEE Project**” or “**Project**”), which project is more fully described in the “Loan Agreement between Nebraska Department of Environment and Energy and City of Crete, Nebraska, NDEE Project No. D311654” (the “**NDEE Agreement**”), and has agreed to lend from monies in the total principal amount of not to exceed \$3,700,000, and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the Drinking Water System, and the Mayor and Council do hereby confirm, ratify and approve all prior actions of the City relative to approval and execution of the said NDEE Agreement;
- E. For the purposes of paying the costs of the NDEE Project as set forth in this Section 1, it is necessary and advisable for the City to issue its Water Revenue Bond, Series 2023, (the “**2023 Bond**”) in the principal amount of not to exceed \$3,700,000, issued as a single promissory note to the NDEE and payable from the revenues of the Drinking Water System.

Section 2. Unless the context shall clearly indicate otherwise, the following terms (in addition to any terms herein defined by parentheses) shall have the following meanings when used in this Ordinance:

- (a) the term “**Additional Bonds**” shall mean any and all bonds including refunding bonds and notes, hereafter authorized and issued by the City pursuant to the terms of this Ordinance which are equal to lien to the 2023 Revenue and equally and ratably secured therewith including any such bonds issued pursuant to Section 11 of this Ordinance.
- (b) the term “**revenues**” shall mean all the rates, rentals, fees, charges, earnings and other monies from any source whatever derived by the City of Crete through its ownership and operation of the Drinking Water System (including, without limitation, fees and charges for hook ups, taps and capital facilities charges).

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2023 Bond, in the form of and evidenced by a single promissory note (sometimes referred to in this Ordinance, according to the context, as the “**2023 NDEE Note**” and sometimes as the “**2023 Bond**”) in the principal amount of not to exceed Three Million Seven Hundred Thousand Dollars (\$3,700,000), with such 2023 NDEE Note to be substantially in such form and to have such payment terms as are set forth as included in the NDEE Agreement attached as Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In connection with the issuance of the 2023 NDEE Note, the City shall also enter into the NDEE Agreement in substantially the form set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms and conditions of the 2023 NDEE Note, the NDEE Agreement, and NDEE Project are hereby approved and the Mayor and the City Clerk are hereby authorized to execute and deliver the NDEE Agreement and the 2023 NDEE Note for and on behalf of the City in the form attached, but with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates all revenues and earnings, now or hereafter received, or otherwise due and owing to the City, derived from the ownership and operation of the City’s Drinking Water System and all extensions and enlargements thereof, including any additions and improvements hereafter made, for the payment of principal of and interest on the 2023 Bond and any Additional Bonds as the same fall due. So long as said revenues and earnings are sufficient to make all required payments of principal and interest with respect to the 2023 Bond and any Additional Bonds, all such required payments with respect to each such issue shall be made in full from the respective sub-accounts in the Water Revenue Bond Account for each such series. In the event that such revenues and earnings are insufficient to meet the required payments from the Water Revenue Bond Account, such revenues and earnings shall be allocated to the 2023 Bond and any such Additional Bonds, pro rata in accordance with the respective unpaid principal amounts then outstanding for the 2023 Bond and such Additional Bonds. The pledge and hypothecation provided for the 2023 Bond, as provided for in this

Ordinance, is intended to be and shall provide for a first and prior pledge of, lien upon and security interest in the revenues of the Drinking Water System (subject to the right of the City to issue Additional Bonds as provided in this Ordinance) for the payment of principal of and interest on the 2023 Bond, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Drinking Water System, and is intended to be a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended, with respect to its Drinking Water System.

Section 5. The City will maintain and collect rates and charges for all Drinking Water System service furnished from the Drinking Water System adequate to produce revenue and earnings sufficient at all times:

- (a) to provide for the payment of interest on and principal of the 2023 Bond and any Additional Bonds as such interest and principal become due; and
- (b) to pay all reasonable costs of operation and maintenance of the Drinking Water System, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Drinking Water System.

Section 6. The application and handling of all revenues collected, derived and to be derived by the City from the operation of the Drinking Water System shall be governed by the terms of this Ordinance. There has been, and shall be, established a separate fund held by the City Treasurer, designated as the “Crete Water Fund” (herein referred to as the “**Water Fund**”), into which all of the revenues of the Drinking Water System are required to be deposited as and when received. Said Drinking Water System revenues are required to be deposited as and when reviewed. Said Water Fund shall be maintained so long as any of the 2023 Bond and any Additional Bonds remain outstanding. Within the Water Fund, in accordance with the requirements of this Ordinance, the accounts and sub-accounts shall be as follows:

- I. **OPERATION AND MAINTENANCE ACCOUNT:** The City shall set aside in this account each month an amount sufficient for the operation and maintenance of its Drinking Water System and the expenses of maintenance and operation of said utilities shall be paid out of this account.
- II. **WATER REVENUE BOND ACCOUNT:** Within the Water Revenue Bond Account there is hereby ordered established the 2023 Bond Payment Sub-account. Out of the Water Fund the City shall transfer into the Water Revenue Bond Account on or before the first day of each calendar month (or such other dates as may be determined in the NDEE Agreement) the amounts required to be deposited to the 2023 Bond Payment Sub-account in accordance with the following requirements for such sub-account:

Out of the Water Fund, the City shall pay into the Water Revenue Bond Account on or before the first day of each calendar month (or such other day of the month as may be determined in the NDEE Agreement) an amount sufficient to meet the payment requirements for each sub-account established therein. Upon the issuance of the 2023 Bond there is hereby ordered established the 2023 Bond Sub-account for purposes of providing

the payments on the 2023 Bond as the same falls due. Beginning with the first day of the month which immediately follows the “Initiation of Operation” (as defined in the NDEE Agreement, hereafter referred to as the “**Initiation of Operation**”) of the Project, and continuing on the corresponding day of each month thereafter an amount which, when combined with additional equal monthly amounts to be deposited pursuant to this subparagraph prior to the next falling payment date for the 2023 Bond, will be sufficient to provide the required funds due on such payment date with respect to the 2023 Bond.

In any ordinance authorizing Additional Bonds a separate sub-account in the Water Revenue Bond Account shall be established for such Additional Bonds. Credits to the sub-accounts in the Water Revenue Bond Account shall be made at such times and in such amounts to provide sufficient funds in each sub-accounts within the Water Revenue Bond Account shall be made without preference or priority as between sub-accounts and if amounts available are insufficient to make all credits as required the available funds shall be allocated among the sub-accounts for the 2023 Bond, and the various issues of Additional Bonds pro rata in accordance with the respective unpaid principal amounts then outstanding for each issue. Each sub-account in the Water Revenue Bond Account shall constitute a separate account held in trust by the City Treasurer for the separate benefit of the issue of bonds for which it is established.

All such deposits to the Bond Payment Sub-accounts for shall be made in such amounts and at such times that there will be sufficient sums in each such sub-account to meet the payments required to be made by the City with respect to and the 2023 Bond as the same fall due. All such deposits are required to be made without preference or priority as between each such sub-account and any similar sub-account established for the 2023 Bond or any issue of Additional Bonds and if amounts available are insufficient to make all deposits as required, the available funds shall be allocated on a pro rata basis in accordance with the terms of Section 4 of this Ordinance. In the event of the issuance of any Additional Bonds, the City shall in the ordinance authorizing their issuance provide for a related sub-account in the Water Revenue Bond Account and for deposits into such sub-account sufficient to make payments upon such Additional Bonds as the same fall due. Such sub-account and the deposits required to be made thereto shall have equal rank and standing with the Bond Payment Sub-accounts established for the 2023 Bond Payment Sub-account and the payments required to be made to each thereof. Each sub-account in the Water Revenue Bond Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established.

III. SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments as hereinabove required to be made into the Water Revenue Bond Account, all remaining funds in the Water Fund shall be deposited into the Surplus Account to be used as follows:

- 1) To fill any deficiency in the foregoing accounts.
- 2) For the purpose of calling under their option provisions the 2023 Bond or for purchasing on the open market Additional Bonds.
- 3) For improvements, replacements, extensions and enlargements to the Drinking Water System.
- 4) For any other legal municipal purpose provided that money expended for other municipal purposes does not exceed 50% of the amount on hand in the Surplus account as of the time of such expenditure.

Any ordinance authorizing Additional Bonds may provide for the creation of additional accounts and sub-accounts in the Surplus Account or other accounts as may be established for such other purposes as the Mayor and Council shall deem appropriate. In the event that there is a deficiency in any of the accounts described in the foregoing subsections I and II, all moneys in the Surplus Account shall be applied for the purpose described in (1) above prior to any application to the purposes described in (2), (3) or (4) above.

Moneys on deposit in the Water Fund shall be invested in such obligations as are permitted by law for cities of the class to which the City belongs, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the City. Earnings from the investment of such moneys shall not be credited to the particular fund, account or sub-account from which the investment was made but shall be treated as earnings of the Drinking Water System and shall be treated as any other revenues of such Drinking Water System. All investments held for the credit of any Fund or Account or sub-account may be sold when required to make the payment to be made from such Fund or Account or sub-account. Any moneys credited to the Water Fund or any Account or sub-account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class to which the City of Crete belongs.

It is understood that the revenues of the Drinking Water System are to be credited to the various accounts and sub-accounts hereinabove described and as set out in this Ordinance, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts or sub-accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 7. The City of Crete shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Drinking Water System and the holder or holders of the 2023 Bond and any Additional Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said Drinking Water System and all properties comprising the same.

Section 8. The City Treasurer and the City Clerk shall be bonded, in addition to their official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Drinking Water System placed in their hands. Any other person employed by the City in the collection or handling of monies derived from the operation of the Drinking Water System shall also be bonded in an amount sufficient to cover all monies which may at any time be placed in such person's hands. The amount of such bonds shall be fixed by the Council and the cost thereof shall be paid from the earnings of said Drinking Water System, and they shall secure the faithful accounting of all monies.

Section 9. The City will maintain the Drinking Water System in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder or holders from time to time of the 2023 Bond that the City will continue to own, free from all liens and encumbrances, except the liens and pledges provided for in this Ordinance and will adequately

maintain and efficiently operate said Drinking Water System; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 10. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Crete of Additional Bonds payable from the revenues of the Drinking Water System, which Additional Bonds shall be on a parity with the lien of the 2023 Bond and equally and ratably secured therewith and entitled to the security and benefits of this Ordinance; provided that the issuance of such Additional Bonds is permitted pursuant to the terms of this ordinance, the NDEE Agreement and any ordinance authorizing Additional Bonds then outstanding.

Section 11. Nothing herein contained shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of principal and interest of which is a charge upon all or a portion of the revenues of the Drinking Water System, junior or inferior to the 2023 Bond herein authorized, and to the payments to be made into the Operation and Maintenance Account, Water Revenue Bond Account described in Section 6 hereof and the City shall have the right to pay interest thereon and the principal thereof as long as no deficiency exists in the payments into such Accounts, from funds available for improvements and enlargements to the Drinking Water System or from other funds which are available for such debt service.

Section 12. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a water or sewer plant or system in competition with those owned by the City.

Section 13. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holder of the 2023 Bond by an instrument in writing signed by such holder and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holder of the 2023 Bond and interest thereon and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holder of said bond shall be binding upon such holder and upon

the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City.

Section 14. So long as the 2023 Bond is outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and the holder of said bond, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bond. Any holder of the 2023 Bond may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Drinking Water System, the segregation of the revenues of the Drinking Water System and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in Section 6 of this Ordinance. Any holder of the 2023 Bond herein authorized or Additional Bonds shall, after default in payment, have the right to request the appointment of a receiver for the Drinking Water System.

Section 15. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for with respect to the 2023 Bond, shall be fully discharged and satisfied and such bond shall no longer be deemed outstanding hereunder if such bond shall have been purchased and cancelled by the City or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) direct general obligations of the United States government or obligations guaranteed by the United States government ("Deposit Securities") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to the 2023 Bond if it is to be paid prior to maturity, the City shall have duly given

notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the bond for which such monies were deposited, shall be paid over to the City as and when collected. With respect to any deposit made for purposes of satisfying the 2023 Bond under this Section 17, there shall be furnished to NDEE and the Nebraska Investment Finance Authority ("NIFA") an opinion of nationally recognized bond counsel that such deposit for payment of the 2023 Bond will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the fund from which the proceeds of the 2023 Bond were disbursed and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the 2023 Bond unless the 2023 Bond is to be prepaid and redeemed within 60 days from the time of such deposit.

Section 16. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 17. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2023 Bond shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, and the City as issuer shall not file any information report with respect to the issuance of the 2023 Bond pursuant to Section 149(e) of said Code.

Section 18. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 19. This Ordinance shall be published in pamphlet or electronic form. This Ordinance is hereby determined to be a measure necessary to carry out the contractual obligations of the City relating to the Project and shall be in force and effect as provided by law.

PASSED AND APPROVED this ____ day of December, 2023.

Mayor

ATTEST:

City Clerk

[SEAL]

Exhibit "A"

NDEE Loan Agreement