



ORDINANCE NO. 440

AN ORDINANCE CONCERNING THE CREATION OF, IMPROVEMENTS IN, ASSESSMENTS AGAINST PROPERTY IN, AND STREET IMPROVEMENT BONDS FOR LOCAL IMPROVEMENT DISTRICT NO. 16, FOR CONSTRUCTION AND RECONSTRUCTION OF CURBS AND GUTTERS AND THE CONSTRUCTION OF DRAINAGE WORKS INCIDENTAL TO SAID IMPROVEMENTS WITHIN SAID DISTRICT; AND PROVIDING WHEN THIS ORDINANCE SHALL BE IN EFFECT.

WHEREAS, the City Council of the City of Rexburg, Idaho, has heretofore adopted proceedings for the construction of improvements in Local Improvement District No. 16. For the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district, Ordinance of said City No. 439, confirming the assessment roll for such improvement having been duly adopted and approved on September 4, 1963, and

WHEREAS, notice of assessments to property owners in said District has been duly published in accordance with the requirements of said Ordinance No. 439 and the laws of the State of Idaho, and

WHEREAS, the share of the cost of the construction of improvements in said District assessed to the owners of private property in said district is \$33,751.84, and

WHEREAS, during the 20 day period following the confirmation of said assessment roll the owners of private property paid \$8,819.30 on the principal of their assessments, and

WHEREAS, on March 21, 1951, the City Council of said City adopted, and the Mayor of said City approved Ordinance No. 373, creating a Local Improvement Guaranty fund, to be used to guarantee bonds and warrant of local improvement districts in said city.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF REXBURG:

SECTION I: That all of the proceedings heretofore taken and adopted for the creation of said Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said District, and for the construction of improvement therein, and the assessment of a part of the cost of constructing such improvements on and against the private properties in said district, including the provisions of said Ordinance No. 373, which shall apply to the bonds hereafter mentioned, shall be and the same are hereby ratified, approved and confirmed.

SECTION II: That the unpaid assessments chargeable to the abutting, adjoining, contiguous and adjacent lots, blocks and parcels of land within said city, shall be paid for in installments, payable as nearly as may be possible in ten equal annual payments on or before the 14th day of October in each of the years from 1964 to 1973, both inclusive, and bearing interest on the unpaid principal thereof from the 14th of October, 1963, at the net rate of interest as specified and determined by the outstanding street improvement herein authorized, one year's interest being payable annually on or before the 14th day of October in each of said years, both the principal of and the interest on said assessments being payable in lawful money of the United States of America at the office of the City Treasurer of said City, as heretofore more specifically provided.

SECTION III: That the Treasurer of the City of Rexburg be, and he is hereby authorized and empowered, and it shall be his duty to receive and collect all assessments levied to pay the cost of said improvements, the installments thereof, the interest thereon, and the penalties accrued, including, without limiting, the generality of the foregoing, the whole of the unpaid principal which becomes due and payable immediately because of the failure to pay any installment, whether of principal or interest, when due, and to pay and disburse such payments to the person or persons lawfully entitled to receive the same, in accordance with the laws of the State of Idaho, and all the ordinances and resolutions of said City heretofore or to be hereafter adopted. All monies

constituting the payment of principal of said unpaid installments of assessments shall be placed in a separate fund to be designated "Bond Fund of Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district" and shall be used as soon as they are available therefore for the purpose whatsoever, and as security for such payment said fund is hereby pledged. Should there not be sufficient money in said interest fund to pay all of the interest coupons falling due at one time, then interest coupons shall be paid in the numerical order of the bonds to which they were attached. Said funds shall be kept separate and apart from each other and from any other funds of said City or otherwise, and shall from time to time, as they are accumulated, be deposited in such bank or banks as are designated as depositories of public monies for the funds of said City under the depository laws of the State of Idaho for the deposit of public funds. The City treasurer be, and he is also hereby authorized and empowered, and it shall be his duty, to receive and collect all of the receipts of municipal taxes and charges levied and collected for guaranteeing the payment of said bonds to place said monies in the City's "Local Improvement Guarantee Fund," As heretofore provided, to disburse therefrom said monies for the payment of the interest on and the principal for the bonds hereinafter authorized, if necessary to redeem said bonds at maturity, both principal and interest, and otherwise to maintain and manage said fund in the manner heretofore specified.

SECTION IV: That the City Treasurer shall give public notice of the installments of assessments becoming due, principal, interest and penalties for delinquencies, pursuant to Section 50-2938, Idaho Code, and all laws amendatory thereof and supplemental thereto. The failure of the City Treasurer to publish or mail any such notice or to do any other act or thing required by this section shall not affect such an assessment or installment, nor extend the time for payment thereof, but shall subject the Treasurer to liability to the taxpayer for any damage he may sustain by reason of such failure.

SECTION V: That if the owner of any lot or parcel of land assessed for said improvements shall be delinquent in the payment of any assessment installment of principal or interest due, it shall be the duty of the City Council to cause the Continental Bank & Trust Company, Salt Lake City, Utah, the original purchaser of the bonds herein authorized to be issued, to be immediately notified of such delinquency, in writing, and if such delinquency shall not be paid within ten days after the date of such delinquency, then said Council, at its own expense, shall forthwith collect the assessment and foreclose the special assessment lien against the property or properties wherein the delinquency exists in the method now or hereafter provided by the Local Improvement District Code of the state of Idaho for the collection of said assessment and the foreclosure of said lien, or otherwise as provided by law.

SECTION VI: That the assessments and the interest thereon have been and shall continue to constitute, and are hereby declared to be, a lien in the several amounts assessed against each lot or tract of land hereinbefore specified from and after the 4th day of September, 1963, the date on which the ordinance levying such assessments became effective, which lien shall be superior to the lien of any mortgage or other encumbrance, whether prior in time or not, and shall constitute such lien until paid, subject to the extinguishment of any such lien by the sale of any property on account of nonpayment of general taxes.

SECTION VII: That for the purpose of defraying a portion of the cost of said improvement, there be issued in the name of the City of Rexburg, Street Improvement Bonds of said Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district Series November 1, 1963, in the aggregate principal amount of \$24,932.54, consisting to 50 bonds numbered consecutively from 1 to 50, both inclusive, which bonds shall bear date as of the 1st day of November, 1963, and shall be in denomination hereinafter set forth, provided however, that bond No. 1 shall be of a denomination other than a multiple of \$100.00, in each year, said interest to be evidenced by coupons attached to said bonds. If, upon presentation at maturity, payment of any bond is not made as herein attached to said bonds. If, upon presentation same rate until the principal thereof is paid in full. Said bonds shall be fully negotiable and shall have all the qualities of negotiable paper, subject to the specific provisions stated herein, and the holder or holders thereof shall possess all rights enjoyed by holders of negotiable instruments under the provisions of the Negotiable Instruments Law. Said bonds shall be numbered, shall be in the denomination of, shall bear interest and shall mature serially in regular numerical order in the amounts designated on the 1st day of November in each of the years indicated as follows:

<u>Bond Numbers</u> (All inclusive)	<u>Interest Rate</u> (Per Annum)	<u>Bond</u> <u>Denomination</u>	<u>Amount</u> <u>Maturing</u>	<u>Tear</u> <u>Maturing</u>
1	4-3/4%	432.54	432.54	11/1/64
2-5	4-3/4%	500.00	2000.00	11/1/64
6-10	4-3/4%	500.00	2500.00	11/1/65
11-15	4-3/4%	500.00	2500.00	11/1/66
16-20	4-3/4%	500.00	2500.00	11/1/67
21-25	4-3/4%	500.00	2500.00	11/1/68
26-30	4-3/4%	500.00	2500.00	11/1/69
31-35	4-3/4%	500.00	2500.00	11/1/70
36-40	4-3/4%	500.00	2500.00	11/1/71
41-45	4-3/4%	500.00	2500.00	11/1/72
46-50	4-3/4%	500.00	2500.00	11/1/73

Said bonds and the coupons thereto attached shall be payable in lawful money of the United States of America at the office of the City Treasurer of the City of Rexburg, Madison County, Idaho. Said bonds shall be signed by the Mayor, attested the City Clerk and countersigned by the City Treasurer of the execution of said bonds shall adopt as and for their signatures the facsimiles thereon appearing on said coupons, and when said bonds are executed, said coupons shall constitute the binding obligations of said City for said interest. Said bonds and coupons bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City of Rexburg, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

All of said bonds shall be subject to prior redemption at par, plus a premium of \$45.00 per \$1,000.00 of bonds, whenever there is money in the bond fund of said District, in addition to that necessary to redeem the maturity of the principal of said bonds next accruing as hereinabove provided, sufficient to pay the principal of one or more of said bonds, which bonds shall be called and paid in their numerical order. Notice of prior redemption shall be given by the Treasurer in the name of the City of Rexburg by publication of such notice at least once in each calendar week on any day of the week for at least once in each thirty days prior to the redemption date, in a newspaper of general circulation in the City, and a copy of such notice shall be sent by registered mail at least thirty days prior to the redemption date to Continental Bank & Trust Co., Salt Lake City, Utah. Such notice shall specify the number or numbers of the bonds to be so redeemed (if less than all are to be due and payable upon each bonds so to be redeemed at the office of the Treasurer of the City of Rexburg, the principal amount thereof at par plus a premium of \$45.00 per \$10,000.00 of bonds, together with accrued interest to the redemption date, and that from and after interest will cease to accrue. Notice having been given in the manner hereinbefore provided, the bond or bonds so called for redemption shall become due and payable on the redemption date, and the City of Rexburg will pay the bond or bonds so called for redemption.

SECTION VIII: That said bonds, the coupons thereto attached, and the certificate thereon, shall be in substantially the following form:

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF IDAHO

COUNTY OF MADISON

CITY OF REXBURG

No. _____

\$ _____

STREET IMPROVEMENT BOND LOCAL IMPROVEMENT DISTRICT
NO. 16 FOR STREETS FOR REXBURG, IDAHO

CITY OF REXBURG, IN THE COUNTY FO MADISON, STATE OF IDAHO, for value received, hereby acknowledge itself indebted, and promises to pay to the bearer hereof the sum of _____ DOLLARS on the _____ day of _____ in each year, upon presentation and surrender of this bonds and the attached coupons as they severally become due, both principal and interest being payable in lawful money of the United States of America at the office of the City Treasurer, Rexburg, Idaho.

The bonds of this series are subject to call whenever there is sufficient money in the Bond Fund of Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters, and the construction of drainage works incidental to said improvements within said district, to pay the principal of one or more of said bonds which shall be called and paid in their numerical order, at par plus a premium of \$45.00 per \$1000.00 of bonds.

This bond is issued for the purpose of paying a portion of the costs and expenses of constructing certain street improvements in the streets, avenues and parts thereof, made in Local Improvement District No. 16 for streets for Rexburg, Idaho, pursuant to resolutions and ordinances duly adopted by said City of Rexburg under and by virtue of law known as "Local Improvement District Code," Chapter 29, Title 50, Idaho Code, and all other laws thereunto enabling. In conformity with said Code, it is hereby provided that the principal sum herein named shall be payable from a separate fund designated "Bond Fund Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district", pledged solely for the payment, in regular numerical order, of the principal of the bonds of the series of which this is one, consisting of all monies constituting the payment of principal of assessments unpaid at the time of the issuance of this bond, and the interest hereon shall be payable from a separate fund designates as "Interest Fund of Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district", pledged solely for the payment of interest on assessments unpaid at the time of the issuance of this bond, provided the principal of and the interest on the bonds of the series of which this is one shall, if necessary, be redeemed at maturity from the City's "Local Improvement Guarantee Fund" heretofore duly authorized and created, and not otherwise.

If at any time there shall be not sufficient money available for the payment of interest falling due at any time on all of said bonds from the Interest Fund of Local Improvement District No. 16 for streets for Rexburg, Idaho, then interest coupons shall be paid in the numerical order of the bonds to which they are attached. If, upon presentation at maturity, payment of this bond is not made as herein provided, interest thereon shall continue at the same rate until the principal hereof is paid in full.

The holder of any bond issued under the authority of said "Local Improvement District Code" shall have no claim thereofr against the municipality by which the same is issued, except to the extent of the funds provided for, and to the extent of the Local Improvement Guarantee Fun created under the provisions of said Code; but the municipality shall be held responsible for the lawful levy of all special taxes of assessments herein provided for and for the faithful accounting, settlements and payments of the special taxes and assessemtns levied for the payment of the obnds as therein provided for. The owners and holders of such bonds shall be entitled to a complete enforcement of all assessments made for the payment of such bonds.

The assessments made and levied to pay the cost and expenses of the work or improvement authorized by the provision s of said "Local Improvement District Code," or any law of the State of Idaho, constitute a lien upon and against the property in said Local Imporvement District No. 16 for streets of Rexburg, Idaho, upon which such assessment or assessments were made and levied from and after the 4th day of September, 1963, the date upon which the ordinance levying such assessment or assessemtns became effective, which lien is wuperior to the lien of any mortgage or other encumbrance, whether prior in time or not, and shall constitute such lien until paid, subject to the extinguishment of any such lein by the sale of any property on account of the non-payment of general taxes.

IN TESTIMONY WHEREOF, the said City of Rexburg has caused this bond to be signed by its Mayor, countersigned by its Treasurer and attested by its Clerk under its corporate seal, and the annexed coupons to beat the facsimile signatures of said officers, and this bond to be dated as of the day of _____, 1963.

Mayor, Gilbert L. Larsen

COUTERSIGNED:

TREASURER

(SEAL)

ATTEST:

CITY CLERK

(Coupon Form)

No. _____

\$ _____

On the _____ day of _____, unless the bond to which this coupon is attached has been called for prior redemption, the City of Rexburg, in the County of Madison and State of Idaho, will pay the bearer of the Interest Fund of Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district, for Rexburg, Idaho, being one year's interest on its Street Improvement Bond, dated the _____ day of _____, 1963, bearing No. _____.

Mayor, Gilbert L. Larsen

SECTION IX: That said bonds, when executed, shall be issued to Continental Bank & Trust Co., Salt Lake City, Utah, the lawful purchaser thereof, and when so issued shall transfer to said purchaser or to any owner or owners thereof, all the right and interest of the City of Rexburg in and with respect to every assessment against the property in said District liable to assessment for such local improvements, and the lien thereby created against the property of such owners assessed as shall not have availed themselves of the provisions of law in regard to the redemption of their property of said bonds to receive, sue for, and collect or have collected such assessment embraced in any such bond or through any of the methods provided by law for the collection of assessments for local improvements; and the City of Rexburg hereby pledges to such owner or owners and holder or holders the exercise of all lawful corporate powers in the collection of the assessments for the redemption of said bonds.

SECTION X: That all interim warrants heretofore issued, if any, to pay for the construction of the improvements in said Local Improvement District No. 16 for the construction and reconstruction of curbs and gutters and the construction of drainage works incidental to said improvements within said district, for Rexburg, Idaho, together with the interest due thereon at the date of the issue of said bonds, shall be redeemed and retired from the proceeds of the sale of said bonds.

SECTION XI: That any holder of any one or more of said bonds, or any of the coupons representing interest thereon, may either at law or in equity, by suit, action, mandamus or other appropriate proceeding in any court of competent jurisdiction, protect the liens created by this ordinance on the proceeds of said assessments and any guarantee fund, and any by suit, action, mandamus, or other appropriate proceedings enforce and compel the performance of any duty imposed upon the said city by the provisions of this ordinance, including, without limiting the generality of the foregoing, segregation of assessments and the proper application thereof.

SECTION XII: That the officers of the City of Rexburg be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including, without limiting the generality of the foregoing, the printing of said bonds and the execution of such certificates as may reasonably be required by the purchasers thereof, relating, inter alia, to the signing of the bonds, the tenure and identity of municipal officials, the amounts certified to the signing of the bonds, the tenure and identity of municipal officials, the amounts certified on the assessment roll together with the amount of cash payments, the accuracy of property descriptions, the receipt of the assignable certificates and the delivery of the bonds, and the absence of litigation pending or threatened affecting the validity of the bonds.

SECTION XIII: That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this ordinance, are hereby repealed. This repealer shall not be construed to revive any ordinance, nor resolution, or part thereof, heretofore repealed.

SECTION XIV: That after said street improvement bonds are issued, this ordinance shall be and remain irrevocable until said bonds and the interest thereon shall be fully paid, certified and discharged, as herein provided.

SECTION XV: That this ordinance may be amended or supplemented by any ordinance or ordinances adopted by the City Council in accordance with the laws of the state of Idaho, and without the receipt by the City of any additional consideration, with the written consent of the holders of seventy-five per centum (75%) of the bonds authorized by this ordinance and outstanding at the time of the adoption of such amendatory or supplemental ordinance, provided, however, that no such ordinance shall have the effect of permitting:

- A. An extension of the maturity of any bond authorized by this ordinance; or
- B. A reduction in the principal amount of any bond or the rate of interest thereon;
or
- C. The creation of a lien upon or a pledge of revenues ranking prior to the lien or pledge created by this ordinance; or
- D. A reduction of the principal amount of bonds required for consent to such amendatory or supplemental ordinance.

SECTION XVI: That should any court of competent jurisdiction hold that any part of this ordinance is void or ineffective, such holding shall not affect the remaining parts hereof, the intention being that each part hereof is severable.

SECTION XVII: That, by reason of the fact that certain areas within the City of Rexburg need said local improvements, it is hereby declared that an emergency exists, that this ordinance is necessary to the immediate preservation of the public peace, health and safety, and that it shall be in full force and effect from and after its passage, approval and publication, as provided by law.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 16th of October, 1963.

Mayor, Gilbert L. Larsen

(SEAL)

ATTEST:

CITY CLERK

The Clerk was then instructed to call the roll on the passage of the ordinance and the roll call on said passage of Ordinance No. 440 resulted as follows:

Those voting AYE: John C. Porter
Alma Klingler
A.H. Brock
Charles Zollinger
L. E. Ashliman

Those voting NAY: None

The ordinance was thereupon, by the Mayor, declared to have been duly passed, and the Clerk of the City was directed to publish said Ordinance No. 440 in full immediately in at least one issue of the Rexburg Standard-Journal, a newspaper published in the City of Rexburg, Madison County, Idaho.

There being no further business to come before the meeting, the meeting was, on motion duly made, seconded and carried, adjourned.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 16th of October, 1963.

