



ORDINANCE NO. 603

AN ORDINANCE CONCERNING THE CREATION OF, IMPROVEMENTS IN, ASSESSMENTS AGAINST PROPERTY IN, AND STREET IMPROVEMENT BONDS FOR LOCAL IMPROVEMENT DISTRICT NO. 23, FOR THE PURPOSE OF CAUSING CERTAIN STREETS AND ALLEYS AND PARTS THEREOF WITHIN THE CORPORATE LIMITS OF SAID CITY TO BE GRADED, RE-GRADED, GRAVELED, PAVED, RE-PAVED AND OTHERWISE IMPROVE SAID STREETS WITHIN THE DISTRICT AND TO CONSTRUCT AND RECONSTRUCT CURBS, GUTTERS, SANITARY SEWER MAINS AND SERVICE LINES, WATER MAINS AND SERVICE LINES, DRAINAGE FACILITIES, A CANAL BRIDGE, AND OTHER WORKS INCIDENTAL TO ALL OF THE FOREGOING IMPROVEMENTS ALONG SAID STREETS 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. 23, for the purpose of causing certain streets and alleys and parts thereof within the corporate limits of said city to be graded, re-graded, graveled, paved, re-paved and otherwise improve said streets within the district and to construct and reconstruct curbs, gutters, sanitary sewer mains and service lines, water mains and service lines, drainage facilities, a canal bridge, and other works incidental to all of the foregoing improvements along said streets within said district. Ordinance No. 598 confirming the assessment roll for such improvements was duly adopted and approved on January 17, 1979, and

WHEREAS, notice of assessments to property owners in said District has been duly published in accordance with the requirements of said Ordinance No. 598 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 \$143,135.38, and assessed to the City of Rexburg, Idaho, is \$90,864.62, for a total cost of \$234,000.

WHEREAS, during the 30-day period following the confirmation of said assessment roll, the owners of private property paid \$15,654.97 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 warrants of local improvement districts in said city,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF REXBURG, IDAHO:

SECTION I: That all of the proceedings heretofore taken and adopted for the creation of said Local Improvement District No. 23, for the purpose of causing certain streets and alleys and parts thereof within the corporate limits of said city to be graded, re-graded, graveled, paved, repaved and otherwise improve said streets within the District and to construct and reconstruct curbs, gutters, sanitary sewer mains and service lines, water mains and service lines, drainage facilities, a canal bridge, and other works incidental to all of the foregoing improvements along said streets within said District, 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 lots and lands abutting, adjoining, and adjacent to the streets and alleys to be so improved and on the against all lots and lands benefited by such improvements included in said District, shall be paid for in installments, payable as nearly as may be possible in 15 equal annual payments on or before the 1st day of May in

each of the years from 1980, to 1994, both inclusive, and bearing interest on the unpaid principal thereof from the 17th day of January, 1979, at the rate of seven per cent (7%) per annum, such interest being payable annually on or before the 1st day of May in each of the 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 the City of Rexburg, Idaho.

SECTION III: That the Treasurer of the City of Rexburg, Idaho, be, and she is hereby authorized and empowered, and it shall be her 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. 23 of the City of Rexburg, Idaho", and any funds paid as interest on said installment payments of assessments shall be kept in a fund known as the "Interest Fund of Local Improvement District NO 23, of the City of Rexburg, Idaho." Said bond fund and interest fund shall be deposited in such bank or banks as are designated as depositories of public monies of such municipalities under the laws of the State of Idaho. Interest received on such funds so deposited shall be placed to the credit of the fund from which it was earned. Maturing bonds shall be paid from the bond fund in regular numerical order, and the interest on the bonds, when due, shall be paid from the interest fund. The City Treasurer be, and she is also hereby authorized and empowered, and it shall be her 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 of 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 notice of the installments of assessments becoming due, principal, interest and penalties for delinquencies, pursuant to Section 50-1716, Idaho Code, and all laws amendatory thereof and supplemental thereto. The failure of the City Treasurer to mail 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 municipality to liability to the taxpayer for any damage he may sustain by reason of such failure.

SECTION V: The sale of Local Improvement District No.23 bonds shall transfer to the owner or holder of such bonds all the rights and interest of the City of Rexburg, Idaho, in and with respect to every such assessment and the lien thereby created against the property of each owner assessed as shall not have availed himself of the provisions of the Local Improvement District Code, in regard to the redemption of his property and shall authorize owners and holders of such bonds to receive and have collected the assessment or assessments embraced in any such bonds through any of the methods provided by law for the collection of assessments for local improvements.

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 17th day of January, 1979, 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, such lien shall not be subject to the extinguishment for any reason whatsoever, including but not limited to the sale of the property assessed on account of the nonpayment of general taxes or the conveyance of such property by any means to the United States of America or any agency thereof, the State of Idaho, or any county, city, school district, junior college district or other public body, agency or taxing unit in said state.

SECTION VII: That for the purpose of defraying a portion of the cost of said improvements there be issued, in the name of the City of Rexburg, Street Improvement Bonds of said Local Improvement District No. 23 for the purpose of causing certain streets and alleys and parts thereof within the corporate limits of said city to be graded, re-graded, graveled, paved, re-paved and otherwise improve said streets within the District and to construct and reconstruct curbs, gutters, sanitary sewer mains and service lines, water mains and service lines, drainage facilities, a canal bridge, and other works incidental to all of the foregoing improvements along said streets within said District, Series May 1, 1979, in the aggregate principal amount of \$218,345.03 , consisting

of 219 bonds numbered consecutively from 1 to 219, both inclusive, which bonds shall bear date as of the 1st day of May, 1979, and shall be in denominations hereinafter set forth, provided however, that bond No.1 shall be of a denomination other than a multiple of \$100.00 and shall bear interest at the rate hereinafter specified, payable annually on the 1st day of May, 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 provided, interest thereon shall continue at the 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 Uniform Commercial Code. Said bonds shall be numbered, shall be in the denomination of, and shall bear interest and shall mature serially in regular numerical order in the amounts designated on the 1st day of May in each of the years indicated as follows:

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 by the City Clerk and countersigned by the City Treasurer of the City of Rexburg, and each bond shall have affixed thereto the corporate seal of said City.

The coupons shall bear the facsimile signatures of the Mayor, City Clerk and City Treasurer, which officers by the execution of said bonds shall adopt as and for their signatures the facsimiles thereon appearing on said coupons.

The holder of any bond issued under the authority of the Local Improvement District Code, shall have no claim therefore against the City of Rexburg except to the extent of the funds created and received by assessments against the property within any local improvement district as herein provided and to the extent of the local improvement guarantee fund which has been established by the City of Rexburg, but the City of Rexburg shall be held responsible for the lawful levy of all special taxes or assessments herein provided and for the faithful accounting of settlements and payments of the special taxes and assessments levied for the payment of theories as herein provided. The owners and holders of such bonds shall be entitled to complete enforcement of all assessments made for the payment of such bonds. A copy of Section 50-1723 of the Local Improvement District Code of the State of Idaho shall be plainly written, printed or engraved on the face of each bond so issued.

Each bond shall provide that the principal thereof and the interest thereon are payable solely from the principal of or interest on the unpaid assessments levied in the District to pay the total cost and expenses of said Local Improvement District No. 23 of the City of Rexburg, Idaho.

Maturing bonds shall be paid from the bond fund and the interest on the bonds, when due, shall be paid from the interest fund. If there is sufficient money in the bond fund to pay the principal of one or more bonds, the Treasurer may call in and pay such bonds as of the next interest payment date, at the price of par and accrued interest. The bonds to be called shall be selected by lot and shall, insofar as can be done taking into consideration the denominations of the outstanding bonds, represent an equal amount of bonds from each maturity outstanding at the time of redemption.

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 four successive weeks, the first publication to be at least 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 or certified mail at least thirty days prior to the redemption date to the original purchaser or purchasers of the bonds. Such notice shall specify the number or numbers of the bonds to be so redeemed (if less than all are to be redeemed) and the date fixed for redemption, and shall further state that on such redemption date there will become due and payable upon each bond so to be redeemed at the office of the Treasurer of the City of Rexburg, the principal amount thereof, together with accrued interest to the redemption date, and that from and after such date interest will cease to accrue. Notice having been given in the manner herein before provided, the bond or bonds so called for redemption shall become due and payable on the redemption date so designated and upon presentation thereof at said office, together with all appurtenant coupons maturing subsequent to 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:

NOT AVAILABLE

SECTION IX: That all interim warrants heretofore issued, if any, to pay for the construction the improvements in said Local Improvement District No. 23 of the City of Rexburg, Idaho, shall redeemed and retired from the proceeds of the sale of said bonds.

SECTION X: 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 may 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, the segregation of assessments and the proper application thereof.

SECTION XI: 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 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 XII: 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 XIII: 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 XIV: That this ordinance may be amended or supplemented by an 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 XV: 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 thereof, the intention being that each part hereof is severable.

SECTION XVI: That, by reason of the fact that certain areas within the City of Rexburg, Idaho, 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 18th day of April, 1979.

(SEAL)

John C. Porter, Mayor

ATTEST:

Rose Bagley, City Clerk

