



**ORDINANCE NO. 1005**

**SUMMARY OF ORDINANCE NO. 1005**

**AN ORDINANCE CONCERNING THE IMPROVEMENTS IN, ASSESSMENTS AGAINST PROPERTY IN, AND REGISTERED WARRANTS FOR LOCAL IMPROVEMENT DISTRICT NO. 38, FOR THE PURPOSE OF CAUSING CERTAIN STREETS AND PARTS THEREOF WITHIN THE CORPORATE LIMITS OF SAID CITY TO BE GRADED, RE-GRADED, GRAVELED, PAVED, RE-PAVED AND OTHERWISE IMPROVE CERTAIN STREETS WITHIN THE DISTRICT AND TO CONSTRUCT AND RECONSTRUCT SIDEWALKS, CURBS, GUTTERS, DRIVEWAYS, DRAINAGE FACILITIES, OFF-SITE STORM SEWER, WATER LINES, SEWER LINES, AND OTHER WORKS INCIDENTAL TO ALL OF THE FOREGOING 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. 38 (LID 38), for the purpose of causing certain streets and parts thereof within the corporate limits of said City, to be graded, re-graded, graveled, paved, re-paved and otherwise improve certain streets within the District and to construct and reconstruct sidewalks, curbs, gutters, driveways, drainage facilities, off-site storm sewer and other work incidental to all of the foregoing improvements within said District. Ordinance No. 1000, confirming the assessments roll for such improvements was duly adopted and approved on February 20, 2008, and

**WHEREAS**, notice of assessments to property owners in said District has been duly published in accordance with the requirements of said Ordinance No. 1000 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 \$87,030.06, and

**WHEREAS**, during the 30-day period following the confirmation of said assessment roll, the owners of private property paid \$3,258.68 on the principal of their assessments, leaving a principal balance of \$83,771.38 and

**WHEREAS**, the City authorizes the creation of a LID 38 Warrant Fund in the amount of \$75,000.00, 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 District Guarantee Fund, to be used to guarantee bonds and warrants of local improvements districts in said City,

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

**SECTION 1.** That all of the proceedings heretofore taken and adopted for the creation of said LID 38, for the purpose of causing certain streets and parts thereof within the corporate limits of said city to be graded, re-graded, graveled, paved, re-paved and otherwise improve certain streets within the District and to construct and reconstruct sidewalks, curbs, gutters, driveways, drainage facilities, off-site storm sewer, water lines, sewer lines, and other works incidental to all of the foregoing improvements within said

District, and the assessments 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. 988 and Ordinance No. 1000, which shall apply to the registered warrants hereafter mentioned, shall be and the same are hereby ratified, approved and confirmed.

**SECTION 2.** That the unpaid assessments chargeable to the lots and lands abutting, adjoining, and adjacent to the streets to be so improved and on and 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 fifteen (15) equal annual payments on or before the 20th day of February in each of the years from 2009 to 2023, both inclusive, and bearing interest on the unpaid principal thereof from the 20th day of February, 2008, at the rate of five and a half percent (5.5%) per annum, such interest being payable annually on or before the 20<sup>th</sup> day of February 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 the City of Rexburg, Idaho.

**SECTION 3.** 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, and 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 "LID 38 Warrant Fund" including any funds paid as interest on said installment payments of assessments.

Said Warrant 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 registered warrants including interest due shall be paid from the LID 38 Warrant Fund in regular numerical order. 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 registered warrants to place said monies in the City's "Local Improvement Guarantee Fund," as heretofore provided, to disburse there from said monies for the payment of the interest on and the principal of the registered warrants hereinafter authorized, if necessary to redeem said registered warrants at maturity, both principal and interest, and otherwise to maintain and manage said fund in the manner heretofore specified.

**SECTION 4.** 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.

**SECTION 5.** The sale of LID 38 registered warrants shall transfer to the owner or holder of such registered warrants 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 registered warrants to receive and have collected the assessments or assessments embraced in any such registered warrants through any of the methods provided by law for the collection of assessments for local improvements.

**SECTION 6.** 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 day 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 7.** 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, Warrants of said LID 38 for the purpose of causing certain streets and parts thereof within the corporate limits of said City to be graded, re-graded, graveled, paved, re-paved and otherwise improve certain streets within the District and to construct and reconstruct sidewalks, curbs, gutters, driveways, drainage facilities, off-site storm sewer, water lines, sewer lines and other works incidental to all of the foregoing improvements along said streets within said District, in the aggregate principal amount of \$75,000.00 consisting of registered warrants numbered consecutively from 1 to 15, both inclusive, which registered warrants shall be dated the 11th day of April, 2008, and shall be in denominations hereinafter set forth, payable annually on the 1st day of April, each year, said interest to be evidenced by said registered warrant.

If there is sufficient money in the LID 38 Warrant Fund of the City of Rexburg, Idaho, to pay the principal of one or more registered warrants of this series, the Treasurer of the City of Rexburg, Idaho, may call in and pay such registered warrants as of the next interest payment date at the price of par and accrued interest.

Pursuant to Section 50-1723 of the Local Improvement District Code of the State of Idaho, "The holder of any bond issued under the authority of this code shall have no claim therefor against the municipality by which the same is issued, 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 may be established by any such municipality under the provisions of this code, but the municipality shall be held responsible for the lawful levy of all special taxes or assessments herein provided for and for the faithful accounting of settlements and payments of the special taxes and assessments levied for the payment of the bonds 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."

This warrant is subject to all of the provisions of the Idaho Local Improvement District Code relating to local improvement district bonds so far as the same may be applicable including, but not limited to, Sections 50-1762 to 50-1769, Idaho Code.

The assessments made and levied to pay the cost and expenses of the work or improvements authorized by the provisions of said "Local Improvement District Code of the State of Idaho" shall constitute a lien upon and against the property in said LID 38 for the streets for Rexburg, Idaho, upon which such assessment or assessments were made and levied from and after the date upon which the ordinance levying such assessment or assessments was passed, which lien is 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 any property assessed on account of the non-payment 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 the State of Idaho.

*(End of Summary Warrant Form)* A copy of the full payment schedule and warrant amortization schedule in the ordinance is available on request at City Hall, 12 North Center, Rexburg, Idaho

**SECTION 9.** That all interim warrants heretofore issued, if any, to pay for the construction of the improvements in said LID 38 of the City of Rexburg, Idaho, shall be redeemed and retired from the proceeds of the sale of said warrants.

**SECTION 10.** That any holder of any one or more of said registered warrants 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 the LID 38 Warrant Fund, 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 11.** 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 registered warrants and the execution of such certificates as may reasonably be required by the purchasers thereof, relating, inter alia, to the signing of the registered warrants, 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 registered warrants, and the absence of litigation pending or threatened affecting the validity of the bonds.

**SECTION 12.** 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 13.** That after said street improvement registered warrants are issued, this ordinance shall be and remain irrevocable until said registered warrants and the interest thereon shall be fully paid, certified and discharged, as herein provided.

**SECTION 14.** 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 percent (75%) of the registered warrants 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 registered warrant authorized by this ordinance; or
- B. A reduction in the principal amount of any registered warrant 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 registered warrants required for consent to such amendatory or supplemental ordinance.

**SECTION 15.** 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 16.** 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 of the City of Rexburg, Idaho, on this 16th day of April, 2008.

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Shawn Larsen,

ATTEST:

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Blair D. Kay, City Clerk

I, Stephen Zollinger, City Attorney for the City of Rexburg, declare that in my capacity as City Attorney of the City of Rexburg, pursuant to Idaho Code Section 50-901A(3) of the Idaho Code as amended, I hereby certify that I have reviewed a copy of the above cited Summary of Ordinance and have found the same to be true and complete and to provide adequate notice to the public of the contents, including the exhibits, of Ordinance No. 1004. DATED this 8<sup>th</sup> day of May, 2008.

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Stephen Zollinger, City Attorney  
City of Rexburg