



ORDINANCE NO. 923

AN ORDINANCE OF THE BAYVIEW WATER AND SEWER DISTRICT, OF KOOTENAI COUNTY, IDAHO, APPROVING AND CONFIRMING THE ASSESSMENT ROLL OF ITS LOCAL IMPROVEMENT DISTRICT NO. 1 FOR THE CONSTRUCTION AND INSTALLATION OF CERTAIN SEWER IMPROVEMENTS WITHIN THE LIMITS OF LOCAL IMPROVEMENT DISTRICT NO. 1; PROVIDING FOR ASSESSMENTS AND FOR THE ISSUANCE OF BONDS; CREATING CERTAIN FUNDS AND ACCOUNTS AND PROVIDING FOR CERTAIN COVENANTS WITH REGARD THERETO; PROVIDING FOR THE APPEAL PROCEDURE; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

BAYVIEW WATER AND SEWER DISTRICT
Kootenai County, Idaho

LOCAL IMPROVEMENT DISTRICT NO. 1

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF DIRECTORS OF THE BAYVIEW WATER AND SEWER DISTRICT, OF KOOTENAI COUNTY, IDAHO, AS FOLLOWS:

WHEREAS, the Bayview Water and Sewer District (the "District"), of Kootenai County, Idaho, is a water and sewer district operating and existing under and pursuant to the Constitution and laws of the State of Idaho; and

WHEREAS, said District is authorized by Idaho Code, Title 50, Chapter 17, to issue local improvement district bonds for the purpose of paying the cost of improvements and betterments within local improvement districts of the District; and

WHEREAS, the Board of Directors (the "Board") has heretofore, by Ordinance No. 88-1, adopted on JUNE 8, 1988, duly created Local Improvement District No. 1 ("LID No. 1") for the purpose of making sewer improvements therein; and

WHEREAS, the members of the Board have considered the report of Welch-Comer & Associates, Inc. (the "Engineer"), of Coeur d'Alene, Idaho, with respect to the apportionment and the correctness of the assessments and the amounts levied on any particular lot or parcel of land, including the benefits accruing thereon, and the proper apportionment of the total cost of the improvements to be borne thereby, and the inclusion of any lot or parcel of land in the proposed LID No. 1; and

WHEREAS, it appears to the Board that each lot, tract, parcel, and other property included within LID No. 1 will be specially benefited by the doing and making of the improvements within said LID No. 1, as specified in the Resolution of Intent, being Resolution No. 88-1, adopted on May 16, 1988, in an amount at least equal to the specific amount or amounts set opposite each such lot, parcel of land, and other property upon the assessment roll for said LID No. 1 (the "Assessment Roll"), heretofore filed herein and heard before the Board, and that each and all of said assessments are strictly in accordance with the benefits attributable to each lot, parcel of land and other property, and are in amount and apportionment strictly in accordance with Section 50-1707, Idaho Code, and the resolutions and ordinances of the District, and that said Assessment Roll and each and all of the assessments set forth therein are correct and proper in every respect; and

WHEREAS, notice of time and place of hearing on the final assessment roll was duly and regularly given to all property owners within LID No. 1 by publication thereof and by mailing to all property owners in the manner required by law, and the hearing was duly and regularly held on September 11, 1992, pursuant to said notice, at the time and place fixed for said hearing; and

WHEREAS, the hearing was continued to September 16, 1992 to allow the Board to further consider the protests of the property owners; and

WHEREAS, at said hearings all those persons desiring to be heard were heard and disposition of the protests has been made by Resolution No. 3, adopted on September 16, 1992; and

WHEREAS, the Board now desires to confirm the Assessment Roll, to levy the assessments, and to authorize the issuance of local improvement district bonds;

NOW, THEREFORE, BE IT FURTHER ORDAINED AS FOLLOWS:

Section 1: CONFIRMATION OF ASSESSMENT ROLL

The assessments on the Assessment Roll for LID No. 1 for the purpose of making certain sewer improvements, and engineering, surveying, supervision and inspection for design and installation and all legal and other miscellaneous expenses, within the limits of LID No. 1, all of which is provided for under the Resolution of Intent, are hereby in all respects approved and confirmed. No single assessment has been increased in an amount greater than twenty percent (20%) of the amount of the assessment as set forth in the Notice of Hearing.

Section 2: PROPERTY AFFECTED; LEVY OF ASSESSMENTS

Each lot or parcel of land and other property shown upon the Assessment Roll is hereby found to be benefited to the amount of

the assessment levied thereon, and there is hereby levied and assessed against each of the lots, parcels and other properties, as set forth and described in said Assessment Roll, the amount as finally charged against each such lot, parcel and other property as it appears in said Assessment Roll.

Section 3: CERTIFICATION OF ASSESSMENT ROLL

The Secretary, upon passage of this Ordinance, is directed to certify and file the confirmed Assessment Roll forthwith with the District Treasurer.

Section 4: ASSESSMENTS ARE LIENS; RECORDATION OF NOTICE

The assessments made by this confirming Ordinance shall be a lien upon the property assessed, from and after the date the Secretary records a notice which shall contain the date of adoption of this confirming Ordinance and a description of the area or boundaries of LID No. 1. The Secretary is hereby directed to make said recording with the Kootenai County Recorder, immediately upon the passage of this Ordinance.

Section 5: DUE DATE OF ASSESSMENTS; PAYMENT IN INSTALLMENTS

Said assessments shall become due and payable to the District Treasurer within thirty (30) days from the date of the adoption of this Ordinance. (The Treasurer shall mail notice of the assessment amount due to each property owner assessed at the post office address if known, or if unknown, to the post office in Bayview, Idaho, stating the total amount of the property owner's assessment, plus the substance of the terms of payment of the same as hereinafter set forth.) An affidavit of mailing the foregoing notice shall be filed in the Secretary's office.

Any property owner who has not paid his assessment in full within said thirty-day period shall be conclusively presumed to have chosen to pay the same in thirty (30) equal annual installments, the first of which shall become due and payable one (1) year from the date of the passage of this Ordinance, with a like amount due on the same day of each year thereafter until the full amount of the assessment, with interest due thereon, shall be paid in full. Assessments paid in installments shall bear interest on the whole unpaid sum from the date of adoption of this Ordinance. The rate of interest per annum which such installments shall bear is hereby fixed as the net effective rate of interest on the LID No. 1 Bonds plus one percent (1%). If any installment is not paid within twenty (20) days from the date it is due, the same shall become delinquent and the District Treasurer shall add a penalty of two percent (2%) thereon. (Installments may be prepaid in the manner provided by Section 50-1715, Idaho Code.)

Section 6: COST AND EXPENSES

The total cost and expenses of improvements shall include the contract price of all improvements, together with any costs or expenses incurred for engineering, clerical, printing and legal services, as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as may be considered necessary by the Board. Said costs are hereby levied and assessed by the benefits derived method of assessment against each of the lots, parcels and properties located within LID No. 1, as described in Ordinance No. 88-1 creating LID No. 1.

Section 7: INSTALLMENT DOCKET

The District Treasurer shall, upon passage of this Ordinance, establish a Local Improvement Installment Docket for LID No. 1 as provided in Section 50-1717, Idaho Code.

Section 8: AUTHORIZATION OF BONDS

The issuance of bonds to defray the cost of improvements made within LID No. 1 is hereby authorized. Said bonds shall be designated "Bayview Water and Sewer District Local Improvement District No. 1 Bonds" (the "Bonds"), and shall be more particularly described in an Ordinance to be adopted by the Board, authorizing the issuance and sale of the Bonds. Said Bonds shall be issued in the amount of the cost of the improvements within LID No. 1 as set forth in Section 6 of this Ordinance, less the amount of any assessments paid in within the thirty-day period as set forth in Section 5 of this Ordinance.

Section 9: BOND AND INTEREST FUNDS

The District Treasurer is hereby authorized and empowered, and it shall be his duty, to receive and collect for LID No. 1, all assessments levied on property within LID No. 1 to pay the cost of said improvements, the installments thereof, the interest thereon, and the penalties accrued, and to pay and disburse such payment to the person or persons lawfully entitled to receive the same, in accordance with the laws of the State of Idaho and all ordinances and resolutions of District.

There is hereby created, and shall be maintained by the District Treasurer, a special fund designated "Bayview Water and Sewer District Local Improvement District No. 1 Bond Fund" (the "Bond Fund"), or such other designation conforming to accepted accounting practices. All moneys constituting payment of principal of said unpaid installments of assessments are to be deposited into the Bond Fund, and shall be used and applied for the purpose of paying the principal of the Bonds herein authorized and for no other purpose whatsoever. The Bond Fund is hereby pledged as security for such payment of principal of the Bonds.

There is hereby created, and shall be maintained by the District Treasurer, a special fund designated "Bayview Water and Sewer District Local Improvement District No. 1 Interest Fund" (the "Interest Fund"), or such other designation conforming to accepted accounting practices. All moneys constituting payment of interest on said unpaid installments of assessments are to be deposited into the Interest Fund, and shall be used and applied for the purpose of paying the interest on the Bonds herein authorized and for no other purpose whatsoever. The Interest Fund is hereby pledged as security for such payment of interest on the Bonds.

Moneys in the Bond Fund and the Interest Fund shall be deposited in such bank or banks as are designated as depositories of public moneys of the District under the laws of the State of Idaho, or invested in bonds or warrants of the District. Interest received on such funds so deposited or invested shall be placed to the credit of the Fund from which it is earned.

The District does not plan to deposit any funds in the Guarantee Fund initially. The United States of America, United States Department of Agriculture, the initial purchaser of the Bond authorized herein, is aware that funds will not be deposited in the Guarantee Fund.

Section 10: CREATION OF LOCAL IMPROVEMENT GUARANTEE FUND

There is hereby created, pursuant to Section 50-1762, Idaho Code, a fund designated the "Bayview Water and Sewer District Local Improvement Guarantee Fund" (the "Guarantee Fund"), which shall be maintained by the District Treasurer as a special fund separate and apart from any other fund or account of the District. The Guarantee Fund is created for the purpose of guaranteeing, to the extent of such fund, the payment of the principal of and interest on local improvement district bonds and warrants, including local improvement district bonds and warrants hereafter issued for any local improvement district created by the District, pursuant to Idaho Code Title 50, Chapter 17. Whenever there shall be insufficient funds to make any payment of principal of or interest on the local improvement district bonds or warrants as the same become due, payment therefor shall be made by warrant drawn against the Guarantee Fund in the manner provided by Section 50-1763, Idaho Code. If funds for the payment of such warrant are not available in the Guarantee Fund, such warrant shall be registered as provided in Section 50-1763, Idaho Code, and the District shall cause a special tax to be levied and collected therefor as provided in Section 50-1762, Idaho Code. The Guarantee Fund shall thereafter be maintained in the manner provided by Sections 50-1762 through 1769, Idaho Code.

Section 11: OPERATION OF THE GUARANTEE FUND

Upon the establishment of said Local Improvement Guarantee Fund by the District, when any bond, warrant, or coupon drawn against any

local improvement fund is presented to the District for payment and there is not sufficient amount in said local improvement fund against which to draw to pay the same, unless otherwise requested by the holder, payment therefor shall be made by warrant drawn against the Guarantee Fund. Such warrants, when presented to the District Treasurer for payment, if not paid, shall be registered and shall draw interest at a rate as may be fixed by the Board. Neither the holder nor the owner of any bond or warrant issued under the provisions of Title 50, Chapter 17, Idaho Code, shall have any claim therefor, except for payment from the special assessments made for the improvement for which said bond or warrant was issued, and except as against the Guarantee Fund herein provided, and the District shall not be liable to any holder or owner of such bond or warrant for any loss to the Guarantee Fund occurring in the lawful operation thereof by the District.

Whenever there shall be paid out of the Guarantee Fund any sum on account of principal or interest for a local improvement bond or warrant, the District as trustee for said Guarantee Fund shall be subrogated to all the rights of the holder of such bond or interest coupon or warrant so paid, and the proceeds thereof, and the assessment underlying the same shall become part of the Guarantee Fund. There shall be paid into the Guarantee Fund any surplus remaining in any local improvement fund after the payment of all outstanding bonds or warrants, payable out of such local improvement fund. Bonds or warrants guaranteed by such fund shall have no preference except in the order of presentation for payment.

The District shall prescribe rules and regulations for the maintenance and operation of the Guarantee Fund not inconsistent with Title 50, Chapter 17, Idaho Code. Upon the effective date of this Ordinance, all money derived from the assignment of delinquency certificates, redemptions, sale of property under foreclosure for delinquent local improvement assessments, or from the rent or sale of property, title to which has been obtained by the District pursuant to Title 50, Chapter 17, Idaho Code, shall be paid into the Guarantee Fund and all delinquency certificates issued and such property acquired shall be held by the District for the benefit of such Guarantee Fund. Money from the Guarantee Fund may be used to redeem property subject to local improvement assessments from general tax delinquencies, underlying bonds or warrants guaranteed by the fund, or to purchase such property at county tax sales or otherwise, from the County, for the purpose of protecting the Guarantee Fund. Upon acquiring title to real property, the District may lease or sell and convey the same for such price and on such terms as may be determined by the Board, and any provisions of law, or Ordinance to the contrary notwithstanding, and all proceeds resulting therefrom shall belong to and be paid into the Guarantee Fund; provided, however, that in the event the District purchases such property at tax sale or otherwise, it shall not be sold for a lesser sum than the District paid therefor.

Whenever there is not a sufficient amount of cash in said Guarantee Fund, at any time, to pay any and all warrants, together with interest thereon, drawn against said Guarantee Fund, the Board may replenish said Guarantee Fund, by transferring or appropriating to it, moneys from the general fund of the District, or other available sources, as may be determined by the Board; subject, however, to the limitations prescribed by statute and by this Ordinance. Warrants drawing interest as herein provided may be issued against said Guarantee Fund to meet any financial liability against it; but at the time of making its next annual levy the District shall provide for the levy of a sum sufficient with other resources of the Guarantee Fund to pay warrants so issued and outstanding, the tax for this purpose not to exceed one (1) mill in any one year.

The holder or owner of any local improvement bond or warrant shall have no claim thereon 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 the local improvement district and to the extent of the pro-rata share of any Guarantee Fund, authorized and created under the provisions of this Ordinance.

Section 12: COVENANTS REGARDING ISSUANCE OF FUTURE LOCAL IMPROVEMENT DISTRICT BONDS

After the effective date of this Ordinance creating a Guarantee Fund, any local improvement district bonds issued thereafter shall provide that the principal sum of such bonds and the interest thereon shall be payable out of the local improvement fund created for the payment of cost and expense of the improvement, or out of any Guarantee Fund, duly authorized and created, and not otherwise.

Section 13: POWERS OF DISTRICT IN MAINTENANCE OF GUARANTEE FUND

The District shall have all the rights, duties and powers with reference to the maintenance and operation of such guarantee fund as permitted by law and the officials of the District are hereby required to do any and all things necessary for the establishment, maintenance, conduct and operation of said Guarantee Fund for the purposes specified in this Ordinance and as required by law. The Treasurer of the District is hereby authorized, directed and required to establish and maintain in its office as Treasurer of the District, the foregoing Guarantee Fund, and to pay therein, and to pay thereout, and to maintain said Guarantee Fund, strictly in accordance with the provisions of this Ordinance and as provided by law. Said Treasurer is further authorized, directed and required to maintain and keep in his office true and accurate accounts and records of all funds in, and all funds paid into, or out of, said Guarantee Fund, together with true and correct statements and records of the sources and original of all moneys in said Guarantee Fund, and true and exact accounts and records of all bonds,

warrants, interest, redeemed, paid or purchased, or tax certificates or lands purchased or leased or sold in the conduct of such Guarantee Fund, and of the specific local improvement district funds paid into said Guarantee Fund and the bonds and warrants, and interest thereon, for the security, payment or solution of which, in whole or in part, the moneys of such Guarantee Fund may be maintained and used.

The District shall not order any improvement to be paid for by local assessment when the estimated cost of such improvements, if such costs are to be assessed to the property in the local improvement district, or that portion of the estimated costs to be assessed if a portion only are being assessed, when added to all other outstanding and unpaid local improvement assessments against the property included in the district, excluding penalties and interest, shall exceed the actual value of real property, including the value of the improvements thereon.

The District shall provide by Ordinance the method of determining the actual value of the real property, including the improvements thereon in the local improvement district and when the valuation is so determined, such valuation shall be final and conclusive in the absence of fraud or gross mistake.

Nothing in this Ordinance shall be construed as in any way changing the time or manner of calling and paying local improvement bonds, nor the method of levying and collecting assessments and re-assessments for the purpose of paying for local improvements; but the provisions hereof are cumulative and intended to supplement the existing Ordinance of the District in relating to the making of local improvements and the levying and collecting of assessments and re-assessments to pay therefor.

Section 14: RIGHTS OF REGISTERED OWNERS OF BONDS

The registered owners of the Bonds are entitled to the following rights:

(a) Said Bonds, when issued, shall transfer to the registered owner thereof all the rights and interest of the District in and with respect to every assessment and the lien thereby created against the property of each owner assessed who has not availed himself of the provisions of law in regard to the redemption of his property from the lien of such assessment.

(b) The registered owners of said Bonds shall be authorized 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. The District hereby pledges to such registered owners the exercise of all lawful corporate powers

in the collection of the assessments for the redemption of said Bonds.

(c) Any registered owner of any Bond or Bonds 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 said Guarantee Fund; and may by suit, mandamus, action or other appropriate proceeding enforce and compel the performance of any duty imposed upon the District by the provisions of this Ordinance, including, without limiting the generality of the foregoing, the segregation of assessments and the proper application thereof.

(d) Pursuant to Section 50-1720, Idaho Code, the District hereby covenants with the purchaser and with all subsequent registered owners of the Bonds that if ever the assessments of LID No. 1 have failed to be valid in whole or in part for want of form, informality, irregularity and nonconformance with the laws governing such assessments, the Board shall, to the extent permitted by law, reassess such assessments and enforce their collection in accordance with the provisions of law existing at the time the reassessment is made. The District further covenants that when for any cause, mistake or inadvertence, the amount heretofore assessed on any property in LID No. 1 is insufficient to pay the cost and expenses of the improvements made and enjoyed by the owner of such property, the Board shall make reassessment on said property sufficient to pay for such improvements, such reassessment to be made and collected in accordance with the provisions of law existing at the time of its levy.

(e) The District additionally covenants with the purchaser and subsequent registered owners of the Bonds, pursuant to Section 50-1725, Idaho Code, that if the District shall ever default in the payment of the principal or interest, or if any of the Bonds are declared invalid or void by order or decree of court, the District shall, to the extent permitted by law, provide by ordinance for the reissuance of such Bonds at the same rate of interest and in such amount as will cover the principal and interest due on such Bonds, and the ordinance providing for such reissue shall provide for the surrender and cancellation of such Bonds upon which there has been a default or which have been declared invalid or void. The lien created by the levy of assessments heretofore made for LID No. 1 shall not be deemed to have been lost or waived by such reissue, but shall remain in full force and effect.

Section 15: APPEAL PROCEDURE

The confirmation of the Assessment Roll for LID No. 1 herein made is a final determination of the regularity, validity and correctness of said Assessment Roll, of each assessment contained

therein, and of the amount levied on each lot or parcel of land or other property within LID No. 1, subject to the right of appeal as set forth in Section 50-1718, Idaho Code.

Any person who has filed objections to the Assessment Roll, or any other person who feels aggrieved by the decision of the Board then confirming said Assessment Roll, shall have the right to appeal. Such appeal shall be made within thirty (30) days from the date of publication of this Ordinance, by filing a written notice of appeal with the Secretary and with the Clerk of the District Court of Kootenai County, describing the property and objections of the appellant.

After said 30-day appeal period has run, no one shall have any cause or right of action to contest the legality, formality, or regularity of any assessment.

Section 16: RATIFICATION OF PROCEEDINGS

All proceedings heretofore had in connection with the creation of LID No. 1, the preparation and adoption of the Assessment Roll, and hearing thereon, and the giving of notice of said hearing on said Assessment Roll, are hereby in all respects ratified, approved, and confirmed.

Section 17: IRREPEALABILITY

From and after the date the Bonds are issued, this Ordinance shall be and remain irrevocable until the Bonds and the interest thereon shall be fully paid and discharged, as herein provided.

Section 18: SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of each section, paragraph, clause or provision shall in no manner affect any remaining provision of this Ordinance.

Section 19: ENFORCEABILITY CLAUSE

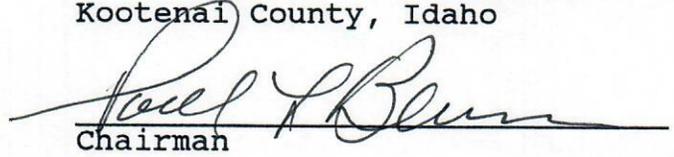
The District shall enforce and seek remedies for breaches of the terms of this Ordinance, as provided by the laws of the State of Idaho.

Section 20: PUBLICATION AND EFFECTIVE DATE

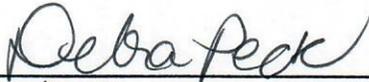
After its passage and adoption, a summary of this Ordinance shall be published once in the official newspaper of the District under the provisions of the Idaho Code, and upon such publication shall be in full force and effect.

PASSED AND ADOPTED this 11th day of September, 1992.

BAYVIEW WATER AND SEWER DISTRICT
Kootenai County, Idaho


Chairman

ATTEST:


Secretary

(S E A L)



CERTIFICATION

I, the undersigned Secretary of the Bayview Water and Sewer District, of Kootenai County, Idaho, HEREBY CERTIFY that the foregoing Ordinance is a full, true, and correct copy of an Ordinance duly adopted at a regular meeting of the Board of Directors of the Bayview Water and Sewer District, duly and regularly held at the regular meeting place thereof on September 16, 1992, of which meeting all members of said Board had due notice and at which a majority thereof were present; and that at said meeting said Ordinance was adopted by the following vote:

AYES, and in favor thereof, Directors: *Paul Blum, Barbara Malnerich, Charles Walter, William Spaulding, Leroy Ellis*

NOES, Directors:

none

ABSENT, Directors:

none

ABSTAIN, Directors:

none

I FURTHER CERTIFY that I have carefully compared the same with the original Ordinance on file and of record in my office; that said Ordinance is a full, true, and correct copy of the original Ordinance adopted at said meeting; and that said Ordinance has not been amended, modified, or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said District on September 16, 1992.

Debra Peck

Secretary

(S E A L)