

ORDINANCE NO. 11-02

AN ORDINANCE OF CARIBOU COUNTY, IDAHO AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 2010-1 BOND IN THE PRINCIPAL AMOUNT OF \$1,039,000; SPECIFYING THE DATE, FORM, INTEREST RATE, REGISTRATION, AND MATURITY OF THE BOND; ESTABLISHING A BOND FUND, INTEREST FUND, AND RESERVE FUND; AUTHORIZING THE SALE OF THE BOND TO THE STATE OF IDAHO; PROVIDING COVENANTS; PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of Commissioners (the "Board") of Caribou County, Idaho (the "County"), has heretofore, by Ordinance No. 11-01, adopted on May 9, 2011, adopted and confirmed the assessment roll in the total amount of \$1,046,286.97 and provided for the issuance of local improvement district bonds for Local Improvement District No. 2010-1 ("L.I.D. No. 2010-1") to pay the costs of improving an irrigation water conveyance system, together with the expenses incident to the project or to the issuance of bonds; and

WHEREAS, a portion of the confirmed assessment roll for L.I.D. No. 2010-1 was prepaid or otherwise credited during the thirty (30) day prepayment period permitted by law for the payment of assessments without penalty or interest, leaving unpaid assessments; and

WHEREAS, the Board desires to issue and sell bonds of L.I.D. No. 2010-1 in the principal amount of \$1,039,000 in order to pay the remaining costs and expenses of the improvements and to fund a debt service reserve fund as additional security for the bonds;

WHEREAS, the County has received a commitment from the Idaho Water Resources Board for a loan (the "Loan") to finance said improvements, and the County intends to enter into a Loan Agreement substantially in the form which is annexed hereto as Exhibit "B" (the "Loan Agreement") with the State of Idaho, Water Resources Board; and

WHEREAS, the County is authorized by law to sell local improvement district bonds at private sale, and is further authorized by Section 57-904(4), Idaho Code, to issue registered public obligations in the form of a single bond representing registered public obligations of smaller denominations, and the Board has determined that it is in the best interests of the County and of the property subject to assessment within L.I.D. No. 2010-1 to issue the obligations of L.I.D. No. 2010-1 in the form of single, fully registered, amortized bond; and

WHEREAS, the Board has determined to sell the single, amortized bond for L.I.D. No. 2010-1 to the State of Idaho Water Resources Board, in accordance with the Loan Agreement approved by the Board.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF CARIBOU COUNTY, IDAHO, as follows:

Section 1: BOND AND LOAN AGREEMENT AUTHORIZED

A single amortized Local Improvement District No. 2010-1 Bond (the "Bond") of the County in the principal amount of \$1,039,000, substantially in the form annexed hereto as Exhibit "A", is hereby authorized to be issued, sold, and delivered, and the Loan Agreement (the "Loan Agreement") in the form annexed hereto as Exhibit "B" evidencing a loan to the County on behalf of L.I.D. No. 2010-1 by the Idaho Water Resource Board (the "IWRB") from the proceeds of the IWRB Water Resource Development Revenue Bonds, Series 2011A (the "IWRB Bonds") is hereby approved. The Bond is issued in the principal amount of the assessable portion of the cost of effecting the above-described local improvements, including the contract price and the cost and expenses of engineering, legal, and all other costs incidental to the improvements, the costs of issuance of the Bond, publications, interim financing, and the cost of establishing a reserve fund for the Bond. In the event of a conflict between the Loan Agreement and this Ordinance, the Loan Agreement shall prevail.

Section 2: DESCRIPTION OF BOND

The Bond shall be dated October 7, 2011, shall be in the aggregate principal amount of \$1,039,000, and shall be issued in fully registered form in the name of the State of Idaho Water Resources Board. The Bond shall be a single bond registered as to both principal and interest, shall be numbered One, shall bear interest on its unpaid balance, payable annually on July 1 of each year, commencing July 1, 2012, at the rate of 5.95% per annum from its date for the first ten years, and at a rate of the Ten Year Treasury Rate plus 250 basis points for the remaining ten years, with a minimum rate of 5.95%, and shall mature on July 1, 2031.

Section 3: EXECUTION

The Bond shall be executed by the manual signature of the Chairperson of the Board of Commissioners, countersigned by the manual signature of the County Treasurer, and attested by the manual signature of the County Clerk.

Section 4: PLACE AND MANNER OF PAYMENT

Both principal and interest on the Bond shall be payable in lawful money of the United States of America. Payment of each installment of principal and interest on the Bond shall be made on its annual due date, commencing July 1, 2012, by check or draft of the Bond Registrar (hereinafter defined) mailed to the registered owners thereof, or assigns, at the address appearing on the registration books for L.I.D. No. 2010-1 maintained by the Bond Registrar (the "Bond Registrar") as of the close of business on the fifteenth day of the month preceding each interest payment date.

Section 5: BOND REGISTRAR

The County Treasurer is hereby appointed as Bond Registrar and shall keep, or cause to be kept, at the office of the County, sufficient books for the registration and transfer of the Bond. The Bond may be transferred only upon the books for the registration and transfer of bonds, upon the surrender thereof at the office of the Bond Registrar. Upon the transfer of the Bond, there shall be issued in the name of the transferee a new fully registered Bond in the aggregate amount of the unpaid principal on the surrendered Bond. The new Bond shall bear the same date as the date of the surrendered Bond, but shall bear interest from the immediately preceding interest payment date to which interest has been paid.

Section 6: PREPAYMENT

The County shall prepay, on any annual payment date, the principal amount outstanding, in whole, or, in the manner hereinafter provided, in part in the manner and to the extent permitted under the Loan Agreement. This requirement will be deemed satisfied where the prepayment is the result of a prepayment of the local improvement assessments to the County and the County pays to Wells Fargo Bank, National Association, as Trustee (the "Trustee"), all the amounts received by the County including all of the interest required to be paid on any prepayment of assessments under the Loan Agreement, and Section 50-1715, Idaho Code, as amended. Interest on this Bond shall cease to accrue as to the amount of principal being prepaid after the date fixed for prepayment if notice has been properly given and funds equal to the amount of prepayment have been deposited at the place of payment at that time.

Section 7: BOND FUND AND INTEREST FUND

The County Treasurer is hereby authorized and empowered, and it shall be his or her duty, to receive and collect for L.I.D. No. 2010-1 all assessments levied on property within L.I.D. No. 2010-1 to pay the costs of said improvements, the installments thereof, the interest thereon, and any penalties accrued, 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 ordinances and resolutions of the County.

All moneys constituting payment of principal of the unpaid installments of assessment for L.I.D. No. 2010-1 shall be deposited into a special fund, designated "Caribou County Local Improvement District No. 2010-1 Bond Fund" (the "Bond Fund"), which is hereby created, and shall be used and applied for the purpose of paying the principal of the Bonds herein authorized and for no other purpose whatsoever, and as security for such payment the Bond Fund is hereby pledged.

All moneys constituting payment of interest on the unpaid installments of assessments for L.I.D. No. 2010-1 shall be deposited into a special fund designated "Caribou County Local Improvement District No. 2010-1 Interest Fund" (the "Interest Fund"), which is hereby created, and shall be used and applied for the purpose of paying the interest on the Bond herein authorized and for no other purpose whatsoever, and as security for such payment the Interest Fund is hereby pledged.

Both principal of and interest on the Bond are payable only out of said Bond Fund and Interest Fund, and, if necessary, out of the Caribou County Local Improvement District No. 2010-1 Reserve Fund, hereinafter created, and not otherwise. Payments out of the Bond Fund and the Interest Fund shall be made to the Trustee in accordance with the Loan Agreement.

Moneys in the Bond Fund and Interest Fund for L.I.D. No. 2010-1 shall be deposited in such bank or banks as are designated as depositories of public moneys for the funds of the County under the depository laws of the State of Idaho for the deposit of public funds or investments as provided by law. Interest received on such funds to be deposited or invested shall be placed to the credit of the fund from which it was earned.

Section 8: RESERVE FUND

A. For the purpose of further securing the payment of the principal of and interest on the Bond and the IWRB Bonds, there is hereby created a special fund funded from the proceeds of the Loan (the "Reserve Fund"), which shall be held and administered by the Trustee as provided in the Loan Agreement and the indenture for the IWRB Bonds (the "Indenture"). There shall be transferred from proceeds of the Loan evidenced by the Bond, to the Reserve Fund, a sum equal to \$103,900, which amount does not exceed 10% of the amount of the Bond and which shall be maintained as a trust fund for the benefit of the owner of the Bond and which shall be used solely for the purposes set forth in the Loan Agreement and the Indenture.

Section 9: SALE OF BOND

The sale of the Bond to the State of Idaho, Water Resource Board, in accordance with the State of Idaho, Water Resource Board, Loan Agreement, a copy of which is annexed hereto as Exhibit "B", is hereby approved.

Section 10: PUBLICATION OF ORDINANCE

Pursuant to Idaho Code Section 50-1727, this Ordinance, or a summary thereof, shall be published once in the official newspaper of the County. No contest or proceeding to question the validity or legality of this Ordinance or of the Bonds authorized hereby shall be brought in any court by any person for any cause whatsoever after the expiration of thirty (30) days from the publication of this Ordinance, and after such time the validity, legality, and regularity of this Ordinance and the Bond authorized hereby shall be conclusively presumed.

Section 11: COVENANTS OF THE COUNTY

The County further covenants and agrees:

A. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Bond shall be issued and remain in fully registered form. The County covenants and agrees that it will take no action to permit the Bond to be issued in, or converted to, bearer or coupon form.

B. None of the proceeds of the Bond will be used directly or indirectly (i) to make or finance loans to persons or (ii) in any trade or business carried on by any person (other than use as a member of the general public). For purposes of the preceding sentence, the term "person" does not include a government unit other than the United States or any agency or instrumentality thereof, and the term "trade or business" means any activity carried on by a person other than a natural person. The County further covenants and agrees to take no action which would cause the Bond to be a "private activity bond," nor will it omit to take any action necessary to prevent the Bond from becoming a "private activity bond," within the meaning of Section 141 of the Code.

C. The Chairperson, County Clerk, and County Treasurer, or any one of such officials, as may be appropriate, are each hereby authorized and directed to execute, on behalf of the County, such certificate or certificates as shall be necessary to establish that the Bond is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated thereunder, and to establish that interest on the Bond is not and will not become includable in the gross income of the owner of the Bond under the Code and applicable regulations. The County covenants and agrees that no use will be made of the proceeds of the Bond, or any funds of the County which may, pursuant to Section 148 of the Code and applicable regulations, be deemed to be proceeds of the Bond, which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The County further covenants to comply throughout the term of the Bond with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Bond from becoming an "arbitrage bond."

D. None of the proceeds of the Bond will be used to reimburse the County for capital expenditures made prior to the date of delivery of the Bond unless the County, not later than 60 days after the payment of such expenditure, shall have adopted an official intent resolution as provided by Section 1.150-2 of the Treasury Regulations.

Section 12: FURTHER AUTHORITY

The Chairperson, County Clerk, and County Treasurer, or any of such officers, as may be appropriate to the circumstances, are hereby authorized to execute, on behalf of the County, such receipts, certifications, and other documents as may be necessary or appropriate to effect the issuance, sale, and delivery of the Bond.

Section 13: EFFECTIVE DATE

This Ordinance shall take effect and be in force immediately upon its passage and approval and publication. Such publication shall be by summary, substantially in the form annexed hereto as Exhibit "C".

DATED this 26th day of September, 2011

CARIBOU COUNTY, IDAHO

By *Loyd M. Rasmussen*
Chairman

ATTEST:

Vida Mascareñas
Clerk
(SEAL)
IDAHO