Summary – an ordinance authorizing installment-purchase agreements.

**BILL 2011-20**
**ORDINANCE ______**

**AN ORDINANCE AUTHORIZING INSTALLMENT PURCHASE AGREEMENTS FOR TAXABLE DIRECT PAY CLEAN RENEWABLE ENERGY BONDS AND TAXABLE DIRECT PAY QUALIFIED ENERGY CONSERVATION BONDS FOR THE PURPOSE OF FINANCING ENERGY CONSERVATION AND RENEWABLE ENERGY PROJECTS; AUTHORIZING THE EXECUTION OF THE AGREEMENTS AND OTHER DOCUMENTS RELATED THERETO; AND PROVIDING THE EFFECTIVE DATE HEREOF.**

**WHEREAS**, the City of Las Vegas (the "City"), in the State of Nevada (the "State"), is a political subdivision of the State duly organized and operating as a city under the provisions of Nevada Revised Statutes ("NRS") chapter 268 and an act entitled "AN ACT incorporating the City of Las Vegas in Clark County, Nevada, under a charter; defining the boundaries thereof; and providing other matters properly relating thereto," cited as chapter 517, Statutes of Nevada, 1983, as amended (the "Charter") and is authorized to transact business and exercise powers under the authority of and pursuant to the Charter and Chapter 268 of the NRS, as amended and supplemented (the "Law"), including the power to enter into installment purchase agreements pursuant to NRS 350.800 for any of its corporate purposes; and

**WHEREAS**, the City Council (the "Council") proposes to enter into an installment-purchase agreement (the "QECB Agreement") in the maximum principal amount of $5,874,300 under NRS 350.087 to 350.095, inclusive (the "Act"), in order to finance all or a portion of the cost to acquire, improve and equip building projects as defined in NRS 268.676, including without limitation, projects for the conservation of energy in existing buildings, street projects as defined in NRS 268.722, which constitute qualified conservation purposes as defined in Section 54D(f) of the Internal Revenue Code of 1986, as amended (the "QECB Project"); and

**WHEREAS**, the Council proposes to enter into an installment-purchase agreement (the "NCREB Agreement" and together with the QECB Agreement, the "Agreements") in the maximum principal amount of $4,974,400 under the Act, in order to finance all or a portion of the cost to acquire, improve and equip building projects as defined in NRS 268.676, including without limitation, projects for renewable energy facilities in existing buildings, street projects as defined in NRS 268.722, which constitute qualified renewable energy facilities as defined in Section 54C(d)(1) of the Internal Revenue Code of 1986, as amended (the "NCREB Project" and together with the QECB Project, the "Projects"); and

**WHEREAS**, NRS 350.087 requires that a notice of intention to authorize the Agreements be published not less than 10 days prior to the consideration of a resolution authorizing the Agreements; and

**WHEREAS**, a notice of intention to act upon the resolution authorizing the Agreements has been duly published in a newspaper of general circulation in the City not less than 10 days prior to the date of a public hearing thereon and the public hearing was held and the Council adopted an authorization resolution on May 19, 2010 (the "Authorization Resolution"); and

**WHEREAS**, the Council made certain determinations in the Authorization Resolution as required by the Act; and

**WHEREAS**, the Authorization Resolution and the necessary documentation were submitted to the State of Nevada, Department of Taxation (the "Department"), for approval as required by NRS 350.089; and

**WHEREAS**, the Council proposes to enter into the Agreements with a term of more than 10 years, requiring the Council, pursuant to NRS 350.014, to submit to the Clark County Debt Management Commission (the "Commission") for its approval or disapproval the following proposal:

> **INSTALLMENT-PURCHASE AGREEMENT PROPOSAL: Shall the City Council of the City of Las Vegas in the State of Nevada, be authorized to incur an indebtedness on behalf of the City by the issuance at one time, or from time to time, of one or more installment-purchase agreements in the maximum aggregate principal amount of $10,848,700 for the purpose of financing, wholly or in part, the cost to acquire, improve and equip building projects as defined in NRS 268.676, street projects as defined in NRS 268.722, qualified conservation purposes pursuant to Section 54D(f) of the Internal Revenue Code of 1986, as amended (the "Code") and qualified renewable energy facilities pursuant to Section 54C of the Code, each one or more installment-purchase agreements to mature not less than 10 years and not greater than 20 years from the date each such agreement is entered into, to bear interest at a rate or rates not in excess of**

**the statutory maximum rate in effect at the time the installment-purchase agreements are entered into, the installment-purchase agreements by their terms to be extinguished by failure of the Council to appropriate money for the ensuing fiscal year for payment of the amounts then due, to be payable from legally available funds of the City, to be secured by a security interest in property of the City as provided in NRS 350.800, and to be entered into upon such terms and conditions, and with such other detail as the Council may determine?**

(the "Proposal"); and

**WHEREAS**, the Commission approved the Proposal on May 7, 2010; and

**WHEREAS**, the Executive Director of the State of Nevada Department of Taxation has approved the Proposal and the written approval is attached hereto and recorded in the minutes of the Council; and

[Attach Approval of Department of Taxation]



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**WHEREAS,** the City has not previously utilized any of the authority so approved by the Department of Taxation and the Debt Management Commission of Clark County and the City has not previously issued any installment-purchase agreements which are subject to such approvals ; and

**WHEREAS**, the Council elects to and hereby determines to issue the Agreements in accordance with the provisions of Chapter 350 of NRS and all laws amendatory thereof which includes the Local Government Securities Laws, being NRS 350.500 through 350.720, and all laws amendatory thereof (the "Bond Act"), NRS 268.672 through 268.740, inclusive (the "City Bond Law") and Chapter 348 of NRS (the "Supplemental Bond Act"); and

**WHEREAS**, the Council has authorized the Chief Financial Officer (the "CFO") and the Director of Finance of the City (the "Director of Finance") or designee to arrange for the issuance and sale of the Agreements, subject to, among other conditions, adoption by the City of this Ordinance specifying the terms and details of the Agreements and approving their sale; and

**WHEREAS**, after negotiation for the sale of the QECB Agreement and the NCREB Agreement, the CFO is hereby authorized to sell the Agreements to the purchasers therefor (the "QECB Purchaser" and the "NCREB Purchaser", respectively) and the CFO is hereby authorized to accept a binding bid for the Agreements; and

**WHEREAS**, the QECB Agreement shall bear interest at the rate or rates per annum provided in the purchase proposal submitted by the QECB Purchaser (the "QECB Purchase Proposal"), such rates not to exceed 3 percent over the Index of Revenue Bonds most recently published in The Bond Buyer prior to the time a negotiated offer is accepted for the QECB Agreement, and shall be sold at a price equal to the principal amount thereof plus accrued interest to the date of delivery of the QECB Agreement, if any, plus a premium or less a discount not to exceed 9 percent of the principal amount of the QECB Agreement, all as specified by the CFO in the QECB Agreement; and

**WHEREAS**, the Secretary of the Treasury allocated to the State a portion of the volume cap under Section 54D(a)(1) of the Internal Revenue Code of 1986, as amended (the "Tax Code") and IRS Notice 2009-29, and the State in turn allocated the amount of $5,874,351 to the City for the QECB Project (the "QECB Volume Cap") and a copy of the allocation notification is on file with the City; and

**WHEREAS,** the aggregate principal amount of the QECB Agreement does not exceed the amount of the QECB Volume Cap and no other obligations have been designated under Section 54D of the Tax Code, pursuant to such allocation; and

**WHEREAS**, the NCREB Agreement shall bear interest at the rate or rates per annum provided in the purchase proposal submitted by the NCREB Purchaser (the "NCREB Purchase Proposal"), such rates not to exceed 3 percent over the Index of Revenue Bonds most recently published in The Bond Buyer prior to the time a negotiated offer is accepted for the NCREB Agreement, and shall be sold at a price equal to the principal amount thereof plus accrued interest to the date of delivery of the NCREB Agreement, if any, plus a premium or less a discount not to exceed 9 percent of the principal amount of the NCREB Agreement, all as specified by the CFO in the NCREB Agreement; and

**WHEREAS**, the Department of the Treasury through the Internal Revenue Service allocated to the City a portion of the volume cap under Section 54C of the Tax Code, IRS Notice 2009-33 and 2009-17 IRB 865, in the amount of $4,974,453 for the NCREB Project (the "NCREB Volume Cap") and a copy of the allocation notification is on file with the City; and

**WHEREAS,** the aggregate principal amount of the NCREB Agreement does not exceed the amount of the NCREB Volume Cap and no other obligations have been designated under Section 54C of the Tax Code, pursuant to such allocation; and

**WHEREAS**, the Council has determined and hereby declares:

(A) It is necessary and in the best interests of the City to effect the Project and to issue and enter into the Agreements;

(B) Each of the limitations and other conditions to the issuance of the Agreements in the Act, the City Bond Law, the Bond Act, the Supplemental Bond Act, and any other relevant act of the State or the Federal Government, has been met; and pursuant to NRS 350.708, this determination of the Council that the limitations in the Bond Act have been met shall be conclusive in the absence of fraud or arbitrary or gross abuse of discretion; and

(C) This Ordinance pertains to the sale, issuance and payment of the Agreements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES ORDAIN**:

Section 1. This ordinance is hereby designated by the short title the "2011 Installment-Purchase Agreements (QECB and NCREB) Ordinance" (the "Ordinance").

Section 2. The Council hereby authorizes the CFO or Finance Director to execute the Agreements with the QECB Purchaser and the NCREB Purchaser evidencing the financing for the Projects in the maximum principal amount of $10,848,700, in substantially the form as currently on file with the Clerk with such changes and amendments as are deemed necessary by the Director of Finance, in the best interests of the City, and not inconsistent with the provisions of this Ordinance and such officer's execution of the Agreement shall be conclusive evidence of such officer's consent to any changes and amendments. The CFO is hereby authorized to negotiate the terms of the Agreements not inconsistent herewith and accept binding offers for the financing of the Agreements which acceptance shall constitute a binding written contract for the sale of the Agreements. The acceptance of the offers by the CFO may be evidenced by execution of the Agreements or a certificates of the CFO containing the interest rate, amounts and dates of principal installments and specified credit rates for each maturity.

The principal of the QECB Agreement shall bear interest from the date of delivery at the annual interest rate(s) set forth in the QECB Agreement to be repaid over a period of not more than 20 years, which term shall not exceed the useful life of the QECB Project and shall mature in equal annual principal installments on the dates and in the amounts and bearing interest at the rates set forth in the certificate of the CFO. Pursuant to NRS 350.800 and the QECB Agreement, the City shall grant a security interest in the QECB Project to the QECB Purchaser. The QECB Agreement must include a provision which provides that the QECB Agreement, by its terms, shall be extinguished by failure of the Council to appropriate money for the ensuing fiscal year for payment of the amounts then due, subject to the Purchaser's right to pursue its security interest in the QECB Project which security interest (or right thereto) shall not be extinguished by failure of the Council to appropriate money for the ensuing fiscal year for payment of the amounts then due.

The principal of the NCREB Agreement shall bear interest from the date of delivery at the annual interest rate(s) set forth in the NCREB Agreement to be repaid over a period of not more than 20 years, which term shall not exceed the useful life of the NCREB Project and shall mature in equal annual principal installments on the dates and in the amounts and bearing interest at the rates set forth in the certificate of the CFO. Pursuant to NRS 350.800 and the NCREB

Agreement, the City shall grant a security interest in the NCREB Project to the NCREB Purchaser. The NCREB Agreement must include a provision which provides that the NCREB Agreement, by its terms, shall be extinguished by failure of the Council to appropriate money for the ensuing fiscal year for payment of the amounts then due, subject to the Purchaser's right to pursue its security interest in the NCREB Project which security interest (or right thereto) shall not be extinguished by failure of the Council to appropriate money for the ensuing fiscal year for payment of the amounts then due.

Section 3. The Agreement is not proposed to be repaid in whole or in part by the levy of a tax which is exempt from the limitations on taxes ad valorem. The Agreement is anticipated to be repaid from other legally available funds of the City, including, without limitation, monies in the City's General Fund in the estimated annual amount of $500,000 to $1,250,000 for a minimum period of 10 years and a maximum period of 20 years and other legally available monies, including ad valorem taxes levied within the limitations provided in chapter 354 of NRS.

Section 4. The officers of the City be and the same hereby are authorized and directed to take all action necessary to effectuate the provisions of this Ordinance, including, without limitation, the execution of such documents required for the closing of the transaction evidenced by the Agreement, including an escrow agreement, if necessary.

Section 5. The City hereby designates the QECB Agreement as a "qualified energy conservation bond" under Section 54D of the Tax Code, makes an irrevocable election that subsection (f) of Section 6431 of the Tax Code shall apply to the QECB Agreement so that the City will directly receive the payment provided in Section 6431 of the Tax Code in lieu of any credit otherwise available to the QECB Purchaser of the QECB Agreement under Section 54A of the Tax Code (the payment described in Section 6431 is herein the "QECB Credit") and that the direct payment subsidy option applies to the QECB Agreement pursuant to Section 30 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat 71 (2010). None of the owners of the QECB Agreement shall be entitled to any credit under Section 54A of the Tax Code. The City covenants that it will not take any action or omit to take any action with respect to the QECB Agreement, the proceeds thereof, any other funds of the City or any project financed with the proceeds of the QECB Agreement if such action or omission would cause the QECB Agreement to not be, or to cease being, "qualified energy conservation bonds" under Section 54D of the Tax Code, entitled to the QECB Credit. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the QECB Agreement until the date on which all obligations of the City in fulfilling the above covenant under the Tax Code have been met. The City shall timely file any document required by the Internal Revenue Service to be filed in order to claim the QECB Credit. Any QECB Credit received by the City under Section 6431 of the Tax Code with respect to the QECB Agreement shall be used to pay the interest portion of the Base Payments (as defined in the QECB Agreement) due under the QECB Agreement or to reimburse the City for amounts it has used to pay that interest.

Section 6. The City hereby designates the NCREB Agreement as a "new clean renewable energy bond" under Section 54C of the Tax Code, makes an irrevocable election that subsection (f) of Section 6431 of the Tax Code shall apply to the NCREB Agreement so that the City will directly receive the payment provided in Section 6431 of the Tax Code in lieu of any credit otherwise available to the NCREB Purchaser of the NCREB Agreement under Section 54A of the Tax Code (the payment described in Section 6431 is herein the "NCREB Credit") and that the direct payment subsidy option applies to the NCREB Agreement pursuant to Section 30 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat 71 (2010). None of the owners of the NCREB Agreement shall be entitled to any credit under Section 54A of the Tax Code. The City covenants that it will not take any action or omit to take any action with respect to the NCREB Agreement, the proceeds thereof, any other funds of the City or any project financed with the proceeds of the NCREB Agreement if such action or omission would cause the NCREB Agreement to not be, or to cease being, "new clean renewable energy bonds" under Section 54C of the Tax Code, entitled to the NCREB Credit. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the NCREB Agreement until the date on which all obligations of the City in fulfilling the above covenant under the Tax Code have been met. The City shall timely file any document required by the Internal Revenue Service to be filed in order to claim the NCREB Credit. Any NCREB Credit received by the City under Section 6431 of the Tax Code with respect to the NCREB Agreement shall be used to pay the interest portion of the Base Payments (as defined in the NCREB Agreement) due under the NCREB Agreement or to reimburse the City for amounts it has used to pay that interest.

Section 7. When first proposed, this Ordinance must be read to the Council by title and referred to a committee for consideration, after which an adequate number of copies of this Ordinance must be deposited with the Clerk for public examination and distribution upon request. Notice of the deposit must be published once in a newspaper of general circulation in the City at least 10 days before the adoption of the Ordinance, such publication to be in substantially the following form:

(Form for Publication of Proposed Ordinance)

**BILL _____**
**ORDINANCE ______**

**AN ORDINANCE AUTHORIZING INSTALLMENT PURCHASE AGREEMENTS FOR TAXABLE DIRECT PAY CLEAN RENEWABLE ENERGY BONDS AND TAXABLE DIRECT PAY QUALIFIED ENERGY CONSERVATION BONDS FOR THE PURPOSE OF FINANCING ENERGY CONSERVATION AND RENEWABLE ENERGY PROJECTS; AUTHORIZING THE EXECUTION OF THE AGREEMENTS AND OTHER DOCUMENTS RELATED THERETO; AND PROVIDING THE EFFECTIVE DATE HEREOF.**

**PUBLIC NOTICE IS HEREBY GIVEN**, that an adequate number of typewritten copies of the above-entitled proposed Ordinance are available for public inspection and distribution at the office of the City Clerk of the City of Las Vegas, at her office in City Hall, 400 Stewart Avenue, Las Vegas, Nevada and that such Ordinance was proposed on April 6, 2011 and will be considered for adoption at a meeting of the City Council of the City of Las Vegas on April 20, 2011.

/s/ Beverly K. Bridges, MMC
City Clerk

(End of Publication of Proposed Ordinance)

Section 8. **Publication and Effective Date.** After this Ordinance is adopted, signed by the Mayor and attested and sealed by the Clerk, this Ordinance shall be in effect on the day of its publication once by its title only, together with the names of the Council Members voting for or against its passage, such publication to be made in a newspaper published and having a general circulation in the City, and such publication to be in substantially the following form:

(Form for Publication After Adoption of Ordinance)

**BILL _____**
**ORDINANCE ______**

**AN ORDINANCE AUTHORIZING INSTALLMENT PURCHASE AGREEMENTS FOR TAXABLE DIRECT PAY CLEAN RENEWABLE ENERGY BONDS AND TAXABLE DIRECT PAY QUALIFIED ENERGY CONSERVATION BONDS FOR THE PURPOSE OF FINANCING ENERGY CONSERVATION AND RENEWABLE ENERGY PROJECTS; AUTHORIZING THE EXECUTION OF THE AGREEMENTS AND OTHER DOCUMENTS RELATED THERETO; AND PROVIDING THE EFFECTIVE DATE HEREOF.**

**PUBLIC NOTICE IS HEREBY GIVEN,** that the above-numbered and entitled Ordinance was proposed by Councilmember __________________ on April 6, 2011, and was passed and adopted at a regular meeting of the City Council of the City of Las Vegas on April 20, 2011, by the following vote of the City Council:

Those Voting Aye:

Those Voting Nay: __________________________

__________________________

Those Absent: __________________________

__________________________

This Ordinance shall be in full force and effect from and after the ___ day of April, 2011, i.e., the date of publication of such Ordinance by title only.

**IN WITNESS WHEREOF**, the City Council of the City of Las Vegas, Nevada, has caused this Ordinance to be published by title only.

**DATED** this April 20, 2011.

Attest:

/s/ Oscar B. Goodman
Mayor, City of Las Vegas

/s/ Beverly K. Bridges, MMC
Clerk, City of Las Vegas

(End of Form of Publication of Adoption of Ordinance)

Section 9. The officers of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limitation:

A. Final Certificates The execution of such certificates as may be reasonably required by the QECB Purchaser and the NCREB Purchaser, relating, inter alia, to:

(1) The execution of the Agreements,

(2) The tenure and identity of the officials of the Council and of the City, and

(3) If it is in accordance with fact, the absence of litigation, pending or threatened, affecting the validity thereof.

B. Other Documents. The execution and delivery of the Agreements by the CFO in substantially the form on file with the Clerk are hereby authorized and approved with such changes as are approved by the CFO Director whose execution thereof shall be conclusive evidence of such officer's consent to such changes. The execution and delivery of such other agreements by the CFO or the Finance Director necessary or appropriate to effectuate the provisions of this Ordinance and the Agreements, including, without limitation, the Escrow Agreements (as defined in the Agreements) and agreements with the Calculation Agent (as defined in the Agreements).

Section 10. All consistent action taken previously by the Council and the officers of the City directed toward the Project, and toward the execution and delivery of the Agreement is ratified, approved and confirmed.

Section 11. All resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are hereby repealed to the extent only of such inconsistency. This repealer shall not be constructed to revive any resolution, or part thereof, heretofore repealed.

Section 12. If any section, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

Adopted April 20, 2011.

(SEAL)

______________________________

Oscar B. Goodman, Mayor

Attest:

______________________________

Beverly K. Bridges, MMC, City Clerk

APPROVED AS TO FORM:

Val Steed 3-28-11

Deputy City Attorney

This Ordinance shall be in full force and effect from and after __________ ___, 2011, i.e., the day after the publication of such Ordinance by its title only.

**STATE OF NEVADA** )
)
**COUNTY OF CLARK** ) ss.
)
**CITY OF LAS VEGAS** )

I, Beverly K. Bridges MMC, the duly chosen and qualified City Clerk of Las Vegas (the "City"), in the State of Nevada, do hereby certify:

1. The foregoing pages constitute a true, correct and compared copy of an ordinance introduced at meeting of the City Council held on April 6, 2011, and the notice of filing of the proposed ordinance was published in a newspaper of general circulation in the City (an affidavit evidencing such publication is attached hereto as Exhibit C). The ordinance was referred to a committee, the committee reported the ordinance back to the City Council, and the ordinance was passed and adopted by the Council at a meeting held on April 20, 2011. The original of such ordinance has been approved and authenticated by the signature of the Mayor of the Council and myself as Clerk, published by title (an affidavit evidencing such publication is attached hereto as Exhibit D), and has been recorded in the minute book of the Council kept for that purpose in my office, which record has been duly signed by such officers and properly sealed.

2. The members of the Council were present at the meeting on April 6, 2011 and voted on the referral of the ordinance as follows:

Mayor:

Those Absent: ______________________

______________________

3. The members of the Council were present at the April 20, 2011 meeting and voted upon the adoption of the Ordinance as follows:

Those Voting Aye:
Mayor:
Councilmembers:

Those Voting Nay: ______________________
Those Absent: ______________________
______________________



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4. All members of the Council were given due and proper notice of the meetings held on April 6, 2011 and April 20, 2011. Pursuant to NRS 241.020, written notice of the meetings was given no later than 9:00 a.m. on the third working day before the meetings including in the notice the time, place, location, and agenda of the meeting:

(a) By posting a copy of the notice by 9:00 a.m. at least three working days before the meetings at the principal office of the Council, or if there is no principal office, at the building in which the meeting is to be held, on the City's website, and at least three (3) other separate, prominent places within the jurisdiction of the Council, to wit:

(i) Court Clerk's Office Bulletin Board
City Hall Plaza
Las Vegas, Nevada;

(ii) City Hall Plaza
Special Outside Posting Bulletin Board
Las Vegas, Nevada;

(iii) Las Vegas Library
833 Las Vegas Boulevard North
Las Vegas, Nevada;

(iv) Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada; and

(v) Grant Sawyer Building
555 E. Washington Avenue
Las Vegas, Nevada.

and

(b) By mailing a copy of the notice to each person, if any, who has requested notices of meetings of the Council in compliance with NRS 241.020(3)(b) by United States Mail, or if feasible and agreed to by the requestor, by electronic mail.

6. A copy of such notice so given of the meeting of the Council on April 6, 2011 is attached to this certificate as Exhibit A, and a copy of such notice so given of the meeting of the Council on April 20, 2011 is attached to this certificate as Exhibit B.

7. Upon request, the governing body provides, at no charge, at least one copy of the agenda for its public meetings, any proposed ordinance or regulation which will be discussed at the public meeting, and any other supporting materials provided to the members of the governing body for an item on the agenda, except for certain confidential materials and materials pertaining to the closed meetings, as provided by law.

**IN WITNESS WHEREOF**, I have hereunto set my hand on this _______________, 2011.

_______________________________
City Clerk



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EXHIBIT A

(Attach Copy of Notice of Meeting held April 6, 2011)

EXHIBIT B

(Attach Copy of Notice of Meeting held April 20, 2011)

EXHIBIT C

(Attach Affidavit of Publication of Filing of Bond Ordinance)

EXHIBIT D

(Attach Affidavit of Publication of Adoption of Bond Ordinance)