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1 alternative financing procedures to promote the installation of the
2 improvements; and

3 WHEREAS, the Renewable Energy Financing District Act, NMSA § 5-18-1
4 *et seq.*, (the "Act"), authorizes New Mexico municipalities to form renewable
5 energy financing districts; and

6 WHEREAS, pursuant to the Act, a district will be considered a political
7 subdivision of the state of New Mexico, separate and apart from a
8 municipality; and

9 WHEREAS, as required by the Act, the City Council of the City of
10 Albuquerque, New Mexico (the "Council ") has duly passed a Resolution
11 authorizing a public hearing on the formation of a renewable energy financing
12 district, to be known as the Albuquerque Renewable Energy Financing District
13 (the "District"); and

14 WHEREAS, the Council, has held a public hearing to consider the
15 formation of the District for the purpose of encouraging, accommodating and
16 financing renewable energy improvements within the District, and an
17 ordinance ordering the formation of the District; and

18 WHEREAS, because concurrent improvements to the energy efficiency
19 of buildings and structures often enable renewable energy generation
20 improvements to be more cost-effective, the costs of energy efficiency
21 improvements that are performed in conjunction with, and designed for the
22 benefit of, the installation of a renewable energy improvement to be financed
23 through the District should be included in amounts financed pursuant this
24 ordinance.

25 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
26 ALBUQUERQUE:

27 A new Article XI, Renewable Energy Financing Districts, shall be created
28 in Chapter 4 of the Code of the City of Albuquerque, as follows:

29 Section 4-11- 1. Title.

30 This ordinance may be referred to as the Renewable Energy Financing
31 District Ordinance.

32 Section 4-11- 2. Definitions.

33 As used in the Renewable Energy Financing District Ordinance:

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1 **Act** means the Renewable Energy Financing District Act, NMSA § 5-18-1
2 *et seq.*

3 **District** means the Albuquerque Renewable Energy Financing District,
4 formed pursuant to the Ordinance.

5 **Owner or Property Owner** means the person who is listed as the owner
6 of real property in the district on the current property tax assessment roll, and
7 who is in fact the legal owner of said real property.

8 **Renewable Energy Improvement** means an eligible photovoltaic, solar
9 thermal, geothermal or wind energy system permanently installed on real
10 property.

11 **Section 4-11- 3. Formation of District.**

12 A renewable energy financing district, to be known as the Albuquerque
13 Renewable Energy Financing District, is formed in the City of Albuquerque
14 with the powers provided for such a district in the Act, except as specifically
15 limited by this ordinance.

16 The District shall serve the purpose of encouraging, accommodating
17 and financing renewable energy improvements pursuant to the Act and this
18 ordinance.

19 **Section 4-11- 4. Inclusion of Property within District.**

20 The District shall include only commercial property located within the
21 City for which the Owner thereof has submitted an application to the District
22 and has agreed to the inclusion of such real property in the District, and for
23 which the owner has submitted documentation, in a format approved by the
24 District, evidencing the written consent of each person holding a first
25 mortgage lien on the property. An owner may apply for and enter into
26 agreements for the inclusion of real property, as provided in Section 4-11-4.
27 Inclusion of property in the District may occur at any time subsequent to the
28 formation of the district. Real property shall be included in and assessed by
29 the District as described in Section 4-11- 6.

30 **Section 4-11- 4. Agreement to Include Real Property within District.**

31 An Owner wishing to have real property included in the District shall
32 submit an agreement for the inclusion of real property in the District, to the
33 District.

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1 **A. Application.** The District shall accept as an application for inclusion
2 of real property in the District, a form of Agreement to be established by the
3 district. Copies of the agreement to include real property within the District
4 may be obtained from the offices of the District, or as otherwise specified by
5 the District. Completed agreements, in the form specified by the District, shall
6 be submitted to the District at such location as the District may specify from
7 time to time. The District may provide for agreements to be submitted or
8 acknowledged by electronic means.

9 **B. Agreement.** To include real property within the District, each Owner
10 must submit an Agreement in a form prescribed by the District from time to
11 time, whereby such owner shall agree to the following:

12 (1) Inclusion of real property within the District.

13 (2) Imposition of a special assessment on real property to pay for
14 the renewable energy improvements (including any lease thereof) and related
15 costs, including installation, financing, and administrative costs.

16 (3) Recording of the lien of the special assessment upon the real
17 property to be included in the District.

18 (4) Waiver of any claims against the City, the District, and their
19 agents arising from inclusion of real property within the District.

20 **Section 4-11-5. Eligible Renewable Energy Improvements.**

21 **A.** The following types of renewable energy improvements (including
22 any lease thereof) are eligible for financing under the Act and ordinance when
23 permanently installed on real property within the District:

24 (1) Photovoltaic Systems;

25 (2) Solar Thermal Systems;

26 (3) Geothermal Systems; and

27 (4) Wind Energy Systems.

28 The financed systems may include the cost of labor, materials,
29 accessories, framing, and items necessary or incidental to the installation of
30 the systems.

31 **B.** The costs of energy efficiency improvements (including any lease
32 thereof) that are permanently installed on or affixed to property, which are
33 designed to reduce energy consumption, or energy related operating costs,

1 and installed or affixed to a property in conjunction with an eligible renewable
2 energy improvement for the purpose of making the renewable energy
3 improvement more cost effective, shall be eligible for financing through the
4 District as part of the costs of the renewable energy improvement, so long as
5 the costs of all improvements ancillary to the renewable energy improvement
6 shall not exceed 49% of the total amount financed. The District may
7 promulgate policies to further identify eligible energy efficiency
8 improvements.

9 C. The District shall only finance renewable energy improvements
10 (including any lease thereof) for which the reasonably estimated economic
11 benefits, including, but not limited to, energy cost savings, maintenance cost
12 savings, and other property operating savings expected from the
13 improvements, including efficiency improvements pursuant to subsection 4-
14 11-5B, during the financing period, is equal to or greater than the incremental
15 principal cost of the improvement.

16 Section 4-11-6. Special Assessments; Assessment Resolution.

17 A. Inclusion of real property in the District will result in the imposition of
18 special assessments on such real property in amounts necessary to pay the
19 costs of permanently installing the approved renewable energy improvements
20 and ancillary costs, including permit and inspection fees, and other ancillary
21 costs required for an eligible improvement, the costs of financing, interest,
22 and administrative fees charged by the District, the City, or their agents. The
23 costs of such improvements will be amortized over a period of time as
24 determined by the District, not to exceed a maximum term of 20 years.

25 B. Each Owner shall acknowledge and consent to the assessment
26 amount and amortization schedule as a condition of inclusion of the real
27 property in the District.

28 C. Following acknowledgement and consent by the Owner of the real
29 property to be included in the District and satisfaction of the other
30 requirements of the Act, this ordinance, and any policies or procedures
31 promulgated by the District, the District Board shall adopt a resolution that
32 includes the real property in the District and imposes the special assessment
33 (the "Assessment Resolution"). An Assessment Resolution may include one

1 or multiple parcels with separate ownership interests. That an Assessment
2 Resolution may be enacted subsequent to the filing of a Special Assessment
3 lien shall not invalidate such lien.

4 **Section 4-11-7. Calculation and Collection of Special Assessments.**

5 The amount of Special Assessments shall be calculated pursuant to
6 Section 4-11-6. District special assessments which have been financed by
7 direct lending shall be collected by the approved financing institution
8 providing such financing, in accordance with the terms of the financing
9 agreement agreed to by the Property Owner, and subject to any policies and
10 procedures established by the District Board. Special assessments may be
11 prepaid pursuant to procedures established by the District Board and
12 identified in the Assessment Resolutions.

13 **Section 4-11- 8. Standards for Renewable Energy Improvements.**

14 The District Board shall set standards and requirements for the
15 permanent installation of renewable energy improvements on real property
16 within the District. Such standards and requirements shall be identified in a
17 subsequent resolution of the District Board and shall, at minimum, include
18 compliance with otherwise applicable state and local permitting requirements.

19 **Section 4-11-9. Priority of Lien Created.**

20 A. A Special Assessment shall constitute a lien on the property, which
21 shall be effective during the period in which the assessment is imposed and
22 shall have priority over all other liens except liens for ad valorem property
23 taxes; provided that only the delinquent portion of such special assessment
24 shall have priority to liens for a first lien mortgage, as provided in subsection
25 4-11-9B.

26 B. In the event a scheduled payment of the special assessment is not
27 paid when due, the amount of the scheduled payment, late fees, and collection
28 costs for the payment, and only those amounts, shall have priority over a first
29 lien mortgage. Payment of an obligation created under the Renewable Energy
30 Financing District Act shall not accelerate for any reason, including late
31 payments, and the property shall not be subject to an enforceable accelerated
32 claim or lien superior to a first lien mortgage for the any portion of the
33 obligation not yet scheduled to be due and payable, except as provided in

1 subsection 4-11-9C. In the event of a foreclosure, only the amount of due and
2 unpaid scheduled payments, late fees, and collection costs for the due and
3 unpaid payment shall have priority, and the remaining balance of the special
4 assessment with all remaining interest and fees shall remain to be paid by
5 future assessments until paid in full. Future payment obligations associated
6 with a renewable energy improvement special assessment shall survive
7 foreclosure by a first lien holder or junior lien holder if the proceeds from such
8 foreclosure do not satisfy such future obligations. The amount of the
9 scheduled payment may be changed to provide for full collection of all
10 amounts within the term originally agreed upon.

11 C. Notwithstanding anything to the contrary in subsection 4-11-9A and
12 B of this Section 4-11-9, in the event that a property encumbered by a special
13 assessment is condemned in whole or part for public purposes, or be
14 substantially damaged or destroyed by fire or other casualty, or should the
15 renewable energy improvements be substantially damaged or destroyed by
16 fire or other casualty, the remaining unpaid balance of the special
17 assessment, including interest accrued to date, shall be due and payable.

18 D. There shall be no terms or conditions in the special assessment that
19 limit the right of the owner to transfer property encumbered by a special
20 assessment; provided, however, that property shall remain encumbered by the
21 special assessment until such time as the obligation related to the special
22 assessment is paid in full.

23 Section 4-11-10. Special Assessment Bonds.

24 A. The District may obtain funds to finance eligible improvements by
25 means of borrowing from the City or from a private lender, or through the
26 issuance of bonds. The District may also provide for direct private lending to
27 finance eligible improvements, pursuant to Section 4-11-11.

28 B. Should the District issue bonds, such issuance shall be in
29 accordance with the relevant provisions of the Act and state law. No holder of
30 special assessment bonds issued pursuant to the Act or the City's Ordinance
31 may compel any exercise of the taxing power of the District or the City to pay
32 the bonds or the interest on the bonds. Any special assessment bonds issued
33 pursuant to the Act are not a debt or general obligation of the City, nor is the

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1 payment of special assessment bonds enforceable out of any money other
2 than the revenue pledged to the payment of the bonds.

3 Section 4-11-11. Direct Lender Financing of Improvements.

4 The District may provide for direct private lending to property owners
5 for the purpose of financing eligible renewable energy improvements, as
6 follows.

7 A. Only entities which are certified by the financial institutions division
8 of the regulation and licensing department as a solar energy improvement
9 financing institutions shall be eligible to participate as direct lenders under
10 this Section 4-11-11.

11 B. An entity wishing to participate as a lender under this Section 4-11-11
12 shall execute an agreement with the District specifying the procedures by
13 which the parties shall transfer any funds which are to be transferred pursuant
14 to the Ordinance. The agreement shall specify that neither the District nor the
15 City is liable in any way for the debt of the property owner, neither is a third
16 party obligor and neither is pledging or lending its credit to the Owner or the
17 lender.

18 C. If the District shall provide for direct private lending, an Owner's
19 application and agreement for property to be included in a Special
20 Assessment shall specify the private entity lender, and all payment terms.

21 D. Upon the District's approval of an application and agreement for a
22 Special Assessment with private lending and the lender's payment of any
23 applicable administrative fees to the District, the lender shall be authorized to
24 release funds to the property Owner or the vendor of the eligible
25 improvements. Prior to the release of funds, the lender shall cause to be filed
26 a Special Assessment lien for its benefit and the benefit of the District. Such
27 lien shall be as otherwise provided in this ordinance, and shall be released
28 upon the Owner's repayment of all amounts financed, and any additional
29 interest or charges due to late payments. That the associated special
30 assessment resolution may be enacted subsequent to the filing of a Special
31 Assessment lien shall not invalidate such lien.

1 E. The District shall promptly transfer monies received from an Owner’s
2 payments of a Special Assessment which are due to a private lender to that
3 private lender.

4 Section 4-11- 12. District Governance and Administration.

5 A. The District Board shall initially be the City Council.

6 B. The District shall promulgate procedures for its operations, and
7 those policies expressly delegated to it this ordinance.

8 C. The District may engage the services of a private entity to administer
9 its functions under the supervision of the District Board, with expenses of
10 administration to be a cost recovered through fees included in the Special
11 Assessments.

12 Section 4-11-13. Severability.

13 If any paragraph, clause, or provision of this ordinance shall for any
14 reason be held to be invalid or unenforceable, the invalidity or
15 unenforceability of such paragraph, clause or provision shall not affect any of
16 the remaining provisions of this ordinance.

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