



City of Yelm

STAFF REPORT

To: Mayor Ron Harding
Yelm City Council

From: Grant Beck, Community Development Director

Date: September 15, 2009 (for September 22nd City Council Meeting)

Subj: Local Improvement District No. 2 Bond, 2009

Recommendation

Adopt Ordinance 910, authorizing the issuance and sale of a local improvement district No. 2 bond in the principal amount of \$10,139,000, providing the form, terms, conditions and covenants of said bond, providing for the sale thereof, and providing for the disposition of the proceeds of the sale.

Background

The proposed Ordinance and staff recommendation assumes that USDA Rural Development Agency has approved a loan guarantee and Thurston First Bank is therefore willing to make the loan. If either of these conditions does not come about prior to the City Council meeting on September 22nd, the Council should not adopt Ordinance 910.

The City Council created Local Improvement District No. 2 (Killion Road LID) by Ordinance No. 847 on June 14, 2006. The Council confirmed the assessment roll for the District in the manner required by law in the amount of \$10,487,000 on May 12, 2009, by Ordinance No. 903. Of the total assessment roll, \$347,383 was prepaid by property owners within the LID boundaries.

It is now necessary that the City issue its Local Improvement District No. 2 Bond in the amount of \$10,139,000, which is the amount of assessments unpaid.

The bond underwriter for the City has attempted to market standard LID bonds, but has failed to place these bonds due to current economic conditions and the foreclosure of the Thurston Highlands property coupled with the pending bankruptcy proceeds by the developer of Thurston Highlands.

Thurston First Bank has offered to purchase the 17 year bond at an interest rate of 8.52% with a maturity date of September 1, 2026. Conditions of the purchase of the

bond include maintaining a guarantee fund of 10% of the outstanding principal. A condition of this offer is that the loan be guaranteed in the amount of 90% by the USDA Rural Development Agency. The application to USDA has been made and approved at the State level and has been submitted to Washington D.C. for final approval.

The balance of assessments remaining unpaid at the end of the prepayment period shall bear interest at a rate of 9.52%, which is one percent greater than the interest rate on the Bond.

The proceeds from the bond will be used to pay the Bond Anticipation Notes in the amount of \$9,591,825.00, due October 1, 2009, make an initial deposit to the guarantee fund, and pay for financing costs.

Current Situation

The adoption of Ordinance 910 effectively accepts a loan from Thurston First Bank in the amount of \$10,139,000, which will be used to repay the Bond Anticipation Notes used to finance the construction of the Killion Road LID, along with financing costs.

CITY OF YELM, WASHINGTON

LOCAL IMPROVEMENT DISTRICT NO. 2 BOND, 2009

ORDINANCE NO. 910

AN ORDINANCE OF THE CITY OF YELM, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 2 BOND IN THE PRINCIPAL AMOUNT OF \$10,139,000; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

APPROVED ON SEPTEMBER __, 2009

PREPARED BY:

K&L GATES LLP
SEATTLE, WASHINGTON

ORDINANCE NO. 910

AN ORDINANCE OF THE CITY OF YELM, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 2 BOND IN THE PRINCIPAL AMOUNT OF \$10,139,000; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

WHEREAS, the City Council of the City of Yelm, Washington (the "City"), by Ordinance No. 847, created Local Improvement District No. 2, also known as and referred to herein as the Killion Road Local Improvement District (the "District"); and

WHEREAS, the assessment roll for the District has been confirmed in the manner required by law by Ordinance No. 903 in the amount of \$10,487,000, of which \$347,383 has been prepaid; and

WHEREAS, it is deemed necessary and desirable that the City issue its Local Improvement District No. 2 Bond in the amount of \$10,139,000, which is the amount of assessments unpaid; and

WHEREAS, the City has heretofore accepted the offer of Thurston First Bank to purchase the Bond on the terms and conditions set forth therein and herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YELM, WASHINGTON, DO ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance the following terms shall have the following meanings, unless a different meaning clearly appears from the context:

Assessments means the assessments levied in Local Improvement District No. 2, which assessments are pledged to be paid into the LID No. 2 Fund, including installments thereof and any interest and penalties due or which may become due thereon.

Bank means Thurston First Bank, or its successor or assigns.

Bond means the Local Improvement District No. 2 Bond authorized by this ordinance to be issued.

Bond Register means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond owned by such owner or nominee.

City means the City of Yelm, Washington, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Washington.

Council means the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

District means Local Improvement District No. 2 of the City, also known and referred to as the Killion Road Local Improvement District.

Government means the United States of America, acting through its Department of Agriculture

Government Obligations has the meaning given such term in RCW Ch. 39.53, as such chapter may be hereafter amended or restated.

Guaranteed Portion means \$9,125,100 of the original principal amount of the Bond and during the life of the Bond, an amount equal to 90% of the outstanding principal balance.

Guaranty Fund means the Guaranty Fund of the City authorized and maintained pursuant to Ch. 35.54 RCW.

Improvements means the street and drainage improvements made within the District as described in Ordinance No. 847.

LID No. 2 Fund means the Local Improvement District No. 2 Fund created by Ordinance No. 847 of the City.

Registrar means the Treasurer for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond as the same become due and payable.

Treasurer means the Finance Director of the City, or other officer or officers succeeding to the duties of such office.

Section 2. Authorization of Bond. For the purpose of paying the costs of the Improvements, making an initial deposit to the Guaranty Fund and issuing the Bond, the City shall issue its Local Improvement District No. 2 Bond, 2009 (the "Bond") in the principal amount of \$10,139,000. The Bond shall be dated as of the date of its delivery to Thurston First Bank (the "Bank"), shall be in fully registered form, shall be numbered for the purpose of identification and control, shall be in the denomination of \$10,139,000, and shall bear interest from its date at the per annum rate of 8.52%, computed on the basis of a 360-day year of twelve 30-day months. Interest shall be payable annually beginning September 1, 2010, and thereafter on the 1st day of

September of each year, and the Bond shall mature September 1, 2026. Principal on the Bond may be prepaid as provided in Section 4 hereof.

The Bond shall be an obligation only of the LID No. 2 Fund and the Local Improvement Guaranty Fund of the City (the "Guaranty Fund") and shall not be a general obligation of the City. All money received by the City in payment of, penalties, if any, and interest on the Assessments levied in the District shall be paid into the LID No. 2 Fund and used to pay the principal of and interest on the Bond, and as security for such payment the LID No. 2 Fund is hereby pledged.

Both the principal of and interest on the Bond shall be payable in lawful money of the United States of America. Interest on the Bond shall be paid by check or draft mailed to the registered owner or assigns at the address appearing on the Bond Register as of the 15th day of the month prior to which an interest payment is due. All principal payments shall be paid by check or draft mailed to the Bank, as the registered owner of the Bond, and the amount of the principal paid shall be noted on the Bond,. Upon receipt of the final payment of principal and interest, the Bank shall surrender the Bond at the office of the Registrar for cancellation in accordance with law.

Section 3. Registrar; Bond Register. The Treasurer shall serve as registrar and paying agent for the Bond (the "Registrar"). The Registrar shall keep, or cause to be kept, sufficient books or records for the registration of the Bond. The Registrar is authorized to authenticate and deliver the Bond in accordance with the provisions of this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Bond Register shall be maintained by the Registrar, and shall contain the name

and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond.

Section 4. Redemption. The principal amount of the Bond shall be prepaid without penalty by application of Assessments and prepayments thereof, in whole or in part, on any interest payment date whenever there shall be sufficient money in the LID No. 2 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on the Bond. Prepayments of principal shall be noted on the Bond. No prepayments may be made from sources other than Assessments and prepayments thereof.

Notice of any such permitted intended prepayment of principal shall be given not less than 3 days prior to the date fixed for prepayment by telephone or in writing to the registered owner of the Bond. The requirements of this section shall be deemed to be complied with when notice is mailed as herein provided regardless of whether or not it is actually received by the owner of the Bond.

Section 5. Payment of Assessments; Interest on Assessments. The City has heretofore levied Assessments payable into the LID No. 2 Fund by Ordinance No. 903 in the total amount of \$10,487,000, of which \$347,383 was prepaid prior to the passage of this ordinance and \$10,139,000 remains payable in annual installments together with interest and penalties thereon in the manner and at the times specified in Ordinance No. 903. The balance of Assessments remaining unpaid at the end of the thirty-day prepayment period shall bear interest at a rate of 9.52%, which is one percent greater than the interest rate on the Bond. Both principal of and interest on the Bond are payable solely out of the LID No. 2 Fund and from the Guaranty Fund.

Section 6. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1 \$10,139,000

STATE OF WASHINGTON

CITY OF YELM

LOCAL IMPROVEMENT DISTRICT NO. 2 BOND, 2009

REGISTERED OWNER: Thurston First Bank

PRINCIPAL AMOUNT: TEN MILLION ONE HUNDRED THIRTY-NINE THOUSAND SIX HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$10,139,617)

INTEREST RATE: 8.52%

MATURITY DATE: September 1, 2026

Laws of Washington 1965, Chapter 7, § 35.45.070 provides, in part, as follows:

Neither the holder nor owner of any bond, interest coupon, or warrant issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of the city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

The City of Yelm, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, solely out of the sources referred to herein, on the Maturity Date set forth above, the Principal Amount set forth above in lawful money of the United States of America, with interest on the unpaid balance hereof from the date hereof at the Interest Rate per annum set forth above, payable September 1, 2010, and annually thereafter on September 1st of each year until payment of the principal sum has been made or duly provided for. Interest on and

principal of this bond is payable by check or draft mailed on the date such interest is due to the registered owner hereof at the address appearing on the bond registration books as of the 15th day of the month prior to which an interest payment is due. Upon receipt of the final payment of principal and interest, the Registered Owner shall presentation and surrender the Bond at the office of the City's Treasurer (the "Registrar") for cancellation in accordance with law.

Principal of this bond is subject to prepayment in advance of its scheduled maturity, in whole or in part on any interest payment date whenever there shall be sufficient money in the LID No. 2 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on this bond. Prepayments of principal shall be entered below. Notice of any such intended prepayment shall be given by telephone or in writing to the Registered Owner not fewer than 3 days prior to such prepayment.

This bond, both principal and interest, is payable only out of the Local Improvement District No. 2 Fund (the "LID No. 2 Fund") created by Ordinance No. 847 of the City, and from the local improvement guaranty fund of the City created pursuant to Chapter 209, Session Laws, 1927, and acts amendatory thereof. The City has irrevocably obligated and bound itself to pay into the LID No. 2 Fund all assessments levied within LID No. 2. The owner of this bond shall have no claim therefor against the City except for payment from the special assessments made for the improvements for which this bond was issued, and except as against the local improvement guaranty fund of the City, and the City shall not be liable to any owner of such Bond for any loss to the guaranty fund occurring in the lawful operation thereof by the City. The remedy of the owner of this bond in case of nonpayment of either principal or interest shall be confined to the enforcement of the assessments and to the guaranty fund. The Bond is not a general obligation of the City.

This bond is authorized by Ordinance No. ____ of the City, passed on September __, 2009 (the "Bond Ordinance"), and is issued to finance improvements in Local Improvement District No. 2, also known and referred to as the Killion Road Local Improvement District.

The City has taken no action to cause the interest on this bond to be exempt from federal income taxation.

The City hereby covenants and agrees with the owner of the Bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for the definitions of defined terms used herein.

Reference to the Bond Ordinance and any and all modifications and amendments thereto is made for a description of the nature and extent of the security for the Bond, the funds pledged, and the terms and conditions upon which the Bond is issued.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, and that acts, conditions, and things required to be done precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Yelm, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of its Mayor, to be attested by the manual or facsimile signature of its Clerk this _____ day of _____, 2009.

CITY OF YELM, WASHINGTON

[SEAL]

By _____ /s/ _____
Mayor

ATTEST:

_____/s/_____
Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is the bond described in the within-mentioned Bond Ordinance and is the Local Improvement District No. 2 Bond, 2009, of the City of Yelm, Washington.

CITY OF YELM
City Treasurer, Registrar

By _____ /s/ _____

Section 7. Execution of Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, and shall be attested by the manual or facsimile signature of the Clerk.

The Bond shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance only if the Certificate of Authentication thereon in the form hereinbefore recited has been manually executed by the Registrar. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money if necessary) sufficient to redeem and retire the Bond in accordance with its terms are set aside in a special account to effect such redemption or retirement and such money and/or the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further

payments need be made into the LID No. 2 Fund for the payment of the principal of and interest on the Bond, and the owner of the Bond shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and the Bond shall be deemed not to be outstanding hereunder.

Section 9. Sale of the Bond. The proposal of the Bank dated September 3, 2009 for sale of the Bond to the Bank, heretofore approved by the Council, is hereby ratified and confirmed, and the City agrees to pay a fee of one percent of the principal amount of the Bond to the Bank and a fee of one percent of the Guaranteed Portion to the Government at closing. The appropriate City officials are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond and for the proper application and use of the proceeds thereof.

Section 10. Disposition of Bond Proceeds. The Bond proceeds shall be deposited into the LID No. 2 Fund and used to pay any remaining costs of the Improvements and pay costs of issuing the Bond and making an initial deposit to the Guaranty Fund.

Section 11. Guaranty Fund. The City hereby covenants that on or before January 1, 2010, the City shall establish a balance in the Guaranty Fund equal to not less than 10% of the then outstanding principal balance of the Bond. The Guaranty Fund shall thereafter be administered and funded as provided in Chapter 35.54 RCW; provided, however, that the City shall maintain a balance therein not less than 10% of the outstanding principal amount of the Bond. Upon a withdrawal from the Guaranty Fund which reduces the balance on hand to an amount less than the 10% requirement,

the City shall re-establish the balance to the 10% requirement within 180 days of that withdrawal.

Section 12. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond of like amount, date, and tenor to the registered owner thereof upon the owner paying the expenses and charges of the City in connection therewith and upon his/her filing with the Registrar evidence satisfactory to the Registrar that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the Registrar with indemnity satisfactory to the Registrar.

Section 13. Business & Industry Loan Guarantee Program. The City has been advised that the Bank is applying to participate in the Government's B&I Loan Guaranty Program. The appropriate City officials are hereby authorized and directed to assist in the application process and execute such documents and agreements as shall be required to confirm the City's participation in this Loan Guaranty Program.

Section 14. Covenants.

(a) The City shall deliver its audited financial statements to the Bank promptly upon the receipt thereof (each two years).

(b) The City shall take all action promptly to foreclose upon defaulted Assessments as the same may be legally foreclosed.

Section 15. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be separable

from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 16. Prior Acts. Any act taken pursuant to the authority of this ordinance but prior to its effective date is hereby ratified and confirmed.

Section 17. Effective Date. This ordinance shall become effective five days from its passage and publication as required by law.

PASSED by the City Council at a regular meeting held this _____ day of September, 2009.

CITY OF YELM, WASHINGTON

By _____
Ron Harding, Mayor

ATTEST:

Janine Schnepf, City Clerk

Date Adopted: September __, 2009

Date of Publication: _____, 2009

Effective Date: _____, 2009

CERTIFICATE OF CLERK

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Yelm, Washington (the "City"), and keeper of the records of the City.

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. ___ of the City (the "Ordinance"), as finally passed at a regular meeting of the City Council held on the ___ day of September, 2009, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of September, 2009.

Janine Schnepf, City Clerk

CITY OF YELM, WASHINGTON

LOCAL IMPROVEMENT DISTRICT NO. 2 BOND, 2009

ORDINANCE NO. 910

AN ORDINANCE OF THE CITY OF YELM, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 2 BOND IN THE PRINCIPAL AMOUNT OF \$10,139,000; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

APPROVED ON SEPTEMBER __, 2009

PREPARED BY:

K&L GATES LLP
SEATTLE, WASHINGTON

ORDINANCE NO. 910

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WHEREAS, the City Council of the City of Yelm, Washington (the "City"), by Ordinance No. 847, created Local Improvement District No. 2, also known as and referred to herein as the Killion Road Local Improvement District (the "District"); and

WHEREAS, the assessment roll for the District has been confirmed in the manner required by law by Ordinance No. 903 in the amount of \$10,487,000, of which \$347,383 has been prepaid; and

WHEREAS, it is deemed necessary and desirable that the City issue its Local Improvement District No. 2 Bond in the amount of \$10,139,000, which is the amount of assessments unpaid; and

WHEREAS, the City has heretofore accepted the offer of Thurston First Bank to purchase the Bond on the terms and conditions set forth therein and herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YELM, WASHINGTON, DO ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance the following terms shall have the following meanings, unless a different meaning clearly appears from the context:

Assessments means the assessments levied in Local Improvement District No. 2, which assessments are pledged to be paid into the LID No. 2 Fund, including installments thereof and any interest and penalties due or which may become due thereon.

Bank means Thurston First Bank, or its successor or assigns.

Bond means the Local Improvement District No. 2 Bond authorized by this ordinance to be issued.

Bond Register means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond owned by such owner or nominee.

City means the City of Yelm, Washington, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Washington.

Council means the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

District means Local Improvement District No. 2 of the City, also known and referred to as the Killion Road Local Improvement District.

Government means the United States of America, acting through its Department of Agriculture

Government Obligations has the meaning given such term in RCW Ch. 39.53, as such chapter may be hereafter amended or restated.

Guaranteed Portion means \$9,125,100 of the original principal amount of the Bond and during the life of the Bond, an amount equal to 90% of the outstanding principal balance.

Guaranty Fund means the Guaranty Fund of the City authorized and maintained pursuant to Ch. 35.54 RCW.

Improvements means the street and drainage improvements made within the District as described in Ordinance No. 847.

LID No. 2 Fund means the Local Improvement District No. 2 Fund created by Ordinance No. 847 of the City.

Registrar means the Treasurer for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond as the same become due and payable.

Treasurer means the Finance Director of the City, or other officer or officers succeeding to the duties of such office.

Section 2. Authorization of Bond. For the purpose of paying the costs of the Improvements, making an initial deposit to the Guaranty Fund and issuing the Bond, the City shall issue its Local Improvement District No. 2 Bond, 2009 (the "Bond") in the principal amount of \$10,139,000. The Bond shall be dated as of the date of its delivery to Thurston First Bank (the "Bank"), shall be in fully registered form, shall be numbered for the purpose of identification and control, shall be in the denomination of \$10,139,000, and shall bear interest from its date at the per annum rate of 8.52%, computed on the basis of a 360-day year of twelve 30-day months. Interest shall be payable annually beginning September 1, 2010, and thereafter on the 1st day of

September of each year, and the Bond shall mature September 1, 2026. Principal on the Bond may be prepaid as provided in Section 4 hereof.

The Bond shall be an obligation only of the LID No. 2 Fund and the Local Improvement Guaranty Fund of the City (the "Guaranty Fund") and shall not be a general obligation of the City. All money received by the City in payment of, penalties, if any, and interest on the Assessments levied in the District shall be paid into the LID No. 2 Fund and used to pay the principal of and interest on the Bond, and as security for such payment the LID No. 2 Fund is hereby pledged.

Both the principal of and interest on the Bond shall be payable in lawful money of the United States of America. Interest on the Bond shall be paid by check or draft mailed to the registered owner or assigns at the address appearing on the Bond Register as of the 15th day of the month prior to which an interest payment is due. All principal payments shall be paid by check or draft mailed to the Bank, as the registered owner of the Bond, and the amount of the principal paid shall be noted on the Bond,. Upon receipt of the final payment of principal and interest, the Bank shall surrender the Bond at the office of the Registrar for cancellation in accordance with law.

Section 3. Registrar; Bond Register. The Treasurer shall serve as registrar and paying agent for the Bond (the "Registrar"). The Registrar shall keep, or cause to be kept, sufficient books or records for the registration of the Bond. The Registrar is authorized to authenticate and deliver the Bond in accordance with the provisions of this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Bond Register shall be maintained by the Registrar, and shall contain

the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond.

Section 4. Redemption. The principal amount of the Bond shall be prepaid without penalty by application of Assessments and prepayments thereof, in whole or in part, on any interest payment date whenever there shall be sufficient money in the LID No. 2 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on the Bond. Prepayments of principal shall be noted on the Bond. No prepayments may be made from sources other than Assessments and prepayments thereof.

Notice of any such permitted intended prepayment of principal shall be given not less than 3 days prior to the date fixed for prepayment by telephone or in writing to the registered owner of the Bond. The requirements of this section shall be deemed to be complied with when notice is mailed as herein provided regardless of whether or not it is actually received by the owner of the Bond.

Section 5. Payment of Assessments; Interest on Assessments. The City has heretofore levied Assessments payable into the LID No. 2 Fund by Ordinance No. 903 in the total amount of \$10,487,000, of which \$347,383 was prepaid prior to the passage of this ordinance and \$10,139,000 remains payable in annual installments together with interest and penalties thereon in the manner and at the times specified in Ordinance No. 903. The balance of Assessments remaining unpaid at the end of the thirty-day prepayment period shall bear interest at a rate of 9.52%, which is one percent greater than the interest rate on the Bond. Both principal of and interest on the Bond are payable solely out of the LID No. 2 Fund and from the Guaranty Fund.

Section 6. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1

\$10,139,000

STATE OF WASHINGTON

CITY OF YELM

LOCAL IMPROVEMENT DISTRICT NO. 2 BOND, 2009

REGISTERED OWNER: Thurston First Bank

PRINCIPAL AMOUNT: TEN MILLION ONE HUNDRED THIRTY-NINE THOUSAND SIX HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$10,139,617)

INTEREST RATE: 8.52%

MATURITY DATE: September 1, 2026

Laws of Washington 1965, Chapter 7, § 35.45.070 provides, in part, as follows:

Neither the holder nor owner of any bond, interest coupon, or warrant issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of the city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

The City of Yelm, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, solely out of the sources referred to herein, on the Maturity Date set forth above, the Principal Amount set forth above in lawful money of the United States of America, with interest on the unpaid balance hereof from the date hereof at the Interest Rate per annum set forth above, payable September 1, 2010, and annually thereafter on September 1st of each year until payment of the principal sum has been made or duly provided for. Interest on and

principal of this bond is payable by check or draft mailed on the date such interest is due to the registered owner hereof at the address appearing on the bond registration books as of the 15th day of the month prior to which an interest payment is due. Upon receipt of the final payment of principal and interest, the Registered Owner shall presentation and surrender the Bond at the office of the City's Treasurer (the "Registrar") for cancellation in accordance with law.

Principal of this bond is subject to prepayment in advance of its scheduled maturity, in whole or in part on any interest payment date whenever there shall be sufficient money in the LID No. 2 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on this bond. Prepayments of principal shall be entered below. Notice of any such intended prepayment shall be given by telephone or in writing to the Registered Owner not fewer than 3 days prior to such prepayment.

This bond, both principal and interest, is payable only out of the Local Improvement District No. 2 Fund (the "LID No. 2 Fund") created by Ordinance No. 847 of the City, and from the local improvement guaranty fund of the City created pursuant to Chapter 209, Session Laws, 1927, and acts amendatory thereof. The City has irrevocably obligated and bound itself to pay into the LID No. 2 Fund all assessments levied within LID No. 2. The owner of this bond shall have no claim therefor against the City except for payment from the special assessments made for the improvements for which this bond was issued, and except as against the local improvement guaranty fund of the City, and the City shall not be liable to any owner of such Bond for any loss to the guaranty fund occurring in the lawful operation thereof by the City. The remedy of the owner of this bond in case of nonpayment of either principal or interest shall be confined to the enforcement of the assessments and to the guaranty fund. The Bond is not a general obligation of the City.

This bond is authorized by Ordinance No. ____ of the City, passed on September __, 2009 (the "Bond Ordinance"), and is issued to finance improvements in Local Improvement District No. 2, also known and referred to as the Killion Road Local Improvement District.

The City has taken no action to cause the interest on this bond to be exempt from federal income taxation.

The City hereby covenants and agrees with the owner of the Bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for the definitions of defined terms used herein.

Reference to the Bond Ordinance and any and all modifications and amendments thereto is made for a description of the nature and extent of the security for the Bond, the funds pledged, and the terms and conditions upon which the Bond is issued.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, and that acts, conditions, and things required to be done precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Yelm, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of its Mayor, to be attested by the manual or facsimile signature of its Clerk this _____ day of _____, 2009.

CITY OF YELM, WASHINGTON

[SEAL]

By _____ /s/ _____
Mayor

ATTEST:

_____/s/_____
Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is the bond described in the within-mentioned Bond Ordinance and is the Local Improvement District No. 2 Bond, 2009, of the City of Yelm, Washington.

CITY OF YELM
City Treasurer, Registrar

By _____ /s/ _____

Section 7. Execution of Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, and shall be attested by the manual or facsimile signature of the Clerk.

The Bond shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance only if the Certificate of Authentication thereon in the form hereinbefore recited has been manually executed by the Registrar. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money if necessary) sufficient to redeem and retire the Bond in accordance with its terms are set aside in a special account to effect such redemption or retirement and such money and/or the principal of and interest on such

obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the LID No. 2 Fund for the payment of the principal of and interest on the Bond, and the owner of the Bond shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and the Bond shall be deemed not to be outstanding hereunder.

Section 9. Sale of the Bond. The proposal of the Bank dated September 3, 2009 for sale of the Bond to the Bank, heretofore approved by the Council, is hereby ratified and confirmed, and the City agrees to pay a fee of one percent of the principal amount of the Bond to the Bank and a fee of one percent of the Guaranteed Portion to the Government at closing. The appropriate City officials are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond and for the proper application and use of the proceeds thereof.

Section 10. Disposition of Bond Proceeds. The Bond proceeds shall be deposited into the LID No. 2 Fund and used to pay any remaining costs of the Improvements and pay costs of issuing the Bond and making an initial deposit to the Guaranty Fund.

Section 11. Guaranty Fund. The City hereby covenants that on or before January 1, 2010, the City shall establish a balance in the Guaranty Fund equal to not less than 10% of the then outstanding principal balance of the Bond. The Guaranty Fund shall thereafter be administered and funded as provided in Chapter 35.54 RCW; provided, however, that the City shall maintain a balance therein not less than 10% of the outstanding principal amount of the Bond. Upon a withdrawal from the Guaranty

Fund which reduces the balance on hand to an amount less than the 10% requirement, the City shall re-establish the balance to the 10% requirement within 180 days of that withdrawal.

Section 12. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond of like amount, date, and tenor to the registered owner thereof upon the owner paying the expenses and charges of the City in connection therewith and upon his/her filing with the Registrar evidence satisfactory to the Registrar that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the Registrar with indemnity satisfactory to the Registrar.

Section 13. Business & Industry Loan Guarantee Program. The City has been advised that the Bank is applying to participate in the Government's B&I Loan Guaranty Program. The appropriate City officials are hereby authorized and directed to assist in the application process and execute such documents and agreements as shall be required to confirm the City's participation in this Loan Guaranty Program.

Section 14. Covenants.

(a) The City shall deliver its audited financial statements to the Bank promptly upon the receipt thereof (each two years).

(b) The City shall take all action promptly to foreclose upon defaulted Assessments as the same may be legally foreclosed.

Section 15. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or

covenants, agreement or agreements, shall be null and void and shall be separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 16. Prior Acts. Any act taken pursuant to the authority of this ordinance but prior to its effective date is hereby ratified and confirmed.

Section 17. Effective Date. This ordinance shall become effective five days from its passage and publication as required by law.

PASSED by the City Council at a regular meeting held this _____ day of September, 2009.

CITY OF YELM, WASHINGTON

By _____
Ron Harding, Mayor

ATTEST:

Janine Schnepf, City Clerk

Date Adopted: September __, 2009

Date of Publication: _____, 2009

Effective Date: _____, 2009

CERTIFICATE OF CLERK

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Yelm, Washington (the "City"), and keeper of the records of the City.

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. ___ of the City (the "Ordinance"), as finally passed at a regular meeting of the City Council held on the ___ day of September, 2009, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of September, 2009.

Janine Schnepf, City Clerk