



Legislation Text

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Clerk 10/18/2004

A MOTION of the county accepting a bid for the purchase of the county's Limited Tax General Obligation Bond Anticipation Notes, 2004, Series A in the aggregate principal amount of \$20,000,000 and fixing the interest rates and other terms thereof in accordance with Ordinance 14167, as amended by Ordinance 14463, Ordinance 14745 and Ordinance 14992; and accepting a bid for the purchase of the county's Limited Tax General Obligation Bond Anticipation Notes, 2004, Series B in the aggregate principal amount of \$26,370,000 and fixing the interest rates and other terms thereof in accordance with Ordinance 14991.

WHEREAS, pursuant to Ordinance 14167, the county council authorized the issuance of one or more series of its limited tax general obligation bonds in an outstanding aggregate principal amount not to exceed \$125,000,000 to provide long-term financing for the Courthouse Seismic Project, the North Rehabilitation Facility Project and the Regional Communications and Emergency Control Center Project, each defined and described in Ordinance 14167, and further authorized the issuance and public sale of one or more series of its limited tax general obligation bond anticipation notes in an outstanding aggregate principal amount not to exceed \$125,000,000 to provide interim financing for such projects pending the issuance of the bonds, and

WHEREAS, pursuant to Ordinance 14463, the county council amended Ordinance 14167 to revise the description of the North Rehabilitation Facility Project and to augment the projects authorized to be financed, on a long-term basis, by such bonds, and pending the sale of such bonds, on an interim basis, by such bond

anticipation notes by the addition of the Courthouse Earthquake Repairs, all as defined and described in Ordinance 14463, and

WHEREAS, pursuant to Ordinance 14745, the county council amended Ordinance 14167, as previously amended by Ordinance 14463, to add the Integrated Security and Jail Health Remodel Project to the list of projects that are authorized to be financed, on a long-term basis, by such bonds, and pending the sale of such bonds, on an interim basis, by such bond anticipation notes, and that the maximum outstanding aggregate principal amount of such bonds and bond anticipation notes be increased to \$145,000,000 as a result; and also to amend certain provisions of Ordinance 14167, as previously amended by Ordinance 14463, pertaining to such bonds and bond anticipation notes, and

WHEREAS, pursuant to Ordinance 14992, the county council amended Ordinance 14167, as previously amended by Ordinance 14463 and Ordinance 14745, to add the Courthouse Lobby Project and the Jail ITR Remodel Project to the list of projects that are authorized to be financed, on a long-term basis, by such bonds, and pending the sale of such bonds, on an interim basis, by such bond anticipation notes, and increase the maximum outstanding aggregate principal amount of such bonds and bond anticipation notes to \$150,000,000 as a result; and amend certain provisions of Ordinance 14167, as previously amended by Ordinance 14463 and Ordinance 14745 (as so amended, the "Series A Note Ordinance"), pertaining to such bonds and bond anticipation notes, and

WHEREAS, the Series A Note Ordinance provided that such bond anticipation notes may be sold at public sale by competitive bid in one or more series as determined by the Finance Director, and

WHEREAS, the Finance Director has determined that a series of such bond anticipation notes, to be designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2004, Series A, in the aggregate principal amount of \$20,000,000 (the "Series A Notes"), be sold as provided herein, and

WHEREAS, currently, \$109,230,000 in aggregate principal amount of the bonds authorized by the Series A Note Ordinance are outstanding. Currently, none of the bond anticipation notes authorized by the

Series A Note Ordinance are outstanding. The aggregate principal amount of all such bonds and bond anticipation notes (including the Series A Notes) to be outstanding on the date of issuance of the Series A Notes will be \$129,230,000, which amount does not exceed \$150,000,000, and

WHEREAS, pursuant to Ordinance 14991 (the "Series B Note Ordinance"), the county council authorized the issuance of one or more series of limited tax general obligation bonds of the county in an outstanding aggregate principal amount not to exceed \$30,000,000 to provide long-term financing for the Juanita Woodlands Open Space Acquisition Project and the Forestry and Nearshore Initiative Project, each defined and described in Series B Note Ordinance, and further authorized the issuance and public sale of one or more series of its limited tax general obligation bond anticipation notes in an outstanding aggregate principal amount not to exceed \$30,000,000 to provide interim financing for such projects pending the issuance of the bonds, and

WHEREAS, the Series B Note Ordinance provided that such bond anticipation notes may be publicly sold in one or more series, any of which may be sold in a combined offering with other notes of the county, either by negotiated sale or by competitive bid, as determined by the Finance Director in consultation with the county's financial advisor, and

WHEREAS, the Finance Director has determined that a series of such bond anticipation notes, to be designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2004, Series B, in the aggregate principal amount of \$26,370,000 (the "Series B Notes" and, together with the Series A Notes, the "Notes"), be sold as provided herein, and

WHEREAS, currently, none of the bonds or bond anticipation notes authorized by the Series B Note Ordinance is outstanding. The aggregate principal amount of all such bonds and bond anticipation notes (including the Series B Notes) to be outstanding on the date of issuance of the Series B Notes will be \$26,370,000, which amount does not exceed \$30,000,000, and

WHEREAS, a preliminary official statement dated October 11, 2004, has been prepared for the public

sale of the Notes, the official Notice of such sale, as amended by the Errata Notice dated October 13, 2004 (as so amended, the "Notice") has been duly published, and bids have been received in accordance with the Notice, and

WHEREAS, the attached bid of Piper Jaffray & Co. to purchase the Series A Notes is the best bid received for the Series A Notes, and it is in the best interest of the county that such Series A Notes be sold to Piper Jaffray & Co. on the terms set forth in the Notice, the attached bid, the Series B Note Ordinance and this motion, and

WHEREAS, the attached bid of Piper Jaffray & Co. to purchase the Series B Notes is the best bid received for the Series B Notes, and it is in the best interest of the county that such Series B Notes be sold to Piper Jaffray & Co. on the terms set forth in the Notice, the attached bid, the Series B Note Ordinance and this motion;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. Definitions. Except as expressly authorized herein, terms used in this motion have the meanings set forth in the Series A Note Ordinance and the Series B Note Ordinance.

B. Ratification of Notice of Sale, Acceptance of Bids, and Authorization of Notes. The issuance of the Series A Notes, designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2004, Series A, in the aggregate principal amount of \$20,000,000 and the terms and conditions thereof set forth in the Notice attached hereto as Exhibit A, are hereby ratified and confirmed. The offer to purchase the Series A Notes, as set forth in the bid of Piper Jaffray & Co. attached hereto as Exhibit B, is hereby accepted. The Series A Notes shall be dated their date of issue and delivery, shall mature on the date, and shall bear interest at the rate and payable on the date specified in Exhibit B. The Series A Notes shall not be subject to redemption. The Series A Notes shall conform in all other respects to the terms and conditions specified in the Notice and Series A Note Ordinance.

The issuance of the Series B Notes, designated as the county's Limited Tax General Obligation Bond

Anticipation Notes, 2004, Series B, in the aggregate principal amount of \$26,370,000, and the other terms and conditions thereof set forth in the Notice, are hereby ratified and confirmed. The offer to purchase the Series B Notes, as set forth in the bid of Piper Jaffray & Co. attached hereto as Exhibit C, which shall be deemed to be adjusted to reflect the changed total par amount of the Notes, as and to the extent permitted by the Notice, is hereby accepted. The Series B Notes shall be dated their date of issue and delivery, shall mature on the date, and shall bear interest at the rates and payable on the date specified in Exhibit C. The Series B Notes shall not be subject to redemption. The Series B Notes shall conform in all other respects to the terms and conditions specified in the Notice and Series B Note Ordinance.

C. Application of Note Proceeds. The proceeds of the Series A Notes shall be applied to provide interim financing for some of the following projects, and paying costs and expenses incurred in issuing the Series A Notes: the Courthouse Seismic Project, the Courthouse Earthquake Repairs, the North Rehabilitation Facility Project, the Integrated Security and Jail Health Remodel Project, the Courthouse Lobby Project, the Jail ITR Remodel Project and the Kent Pullen Regional Communications and Emergency Coordination Center Project.

All of the proceeds of the Series B Notes shall be applied to provide interim financing for the Juanita Woodlands Open Space Acquisition Project and the Forestry and Nearshore Initiative Project, and paying costs and expenses incurred in issuing the Series B Notes.

D. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. This section D constitutes the county's written undertaking for the benefit of the owners and beneficial owners of the Notes as required by section (b)(5) of rule 15c2-12 (the "rule") of the Securities and Exchange Commission (the "commission").

2. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository (the "SID"), if any, in each case as designated by the commission in accordance with the rule, the

following annual financial information and operating data for the prior fiscal year (commencing in 2005 for the fiscal year ended December 31, 2004):

(a) annual financial statements prepared in accordance with the Budget Accounting and Reporting System ("BARS") prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statutes) and generally of the type included in the official statement for the Bonds under the heading "Appendix B: Audited 2003 Financial Statements," which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the county they will be provided;

(b) a summary of the assessed value of taxable property in the county;

(c) a summary of budgeted General Fund revenues and appropriations;

(d) a summary of *ad valorem* property tax levy rates per \$1,000 of assessed value and delinquency rates;

(e) a summary of outstanding tax-supported indebtedness of the county; and

(f) a schedule of the aggregate annual debt service on tax-supported indebtedness of the county.

Items (b) through (f) shall be required only to the extent that such information is not included in the annual financial statements.

Such annual information and operating data described above shall be provided on or before the end of seven months after the end of the county's fiscal year. The county's fiscal year currently ends on December 31. The county may adjust such fiscal year by providing written notice of the change of fiscal year to each then existing NRMSIR and the SID, if any. In lieu of providing such annual financial information and operating data, the county may cross-reference to other documents provided to the NRMSIR, the SID or to the commission, and, if such document is a final official statement within the meaning of the rule, such document will be available from the Municipal Securities Rulemaking Board (the "MSRB").

If not provided as part of the annual financial information discussed above, the county shall provide the county's audited annual financial statement prepared in accordance with BARS when and if available to each

then existing NRMSIR and the SID, if any.

3. Material Events. The county agrees to provide or cause to be provided, in a timely manner, to the SID, if any, and to each NRMSIR or to the MSRB, notice of the occurrence of any of the following events with respect to the Notes, if material:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions or events affecting the tax-exempt status of the Notes;
- (g) modifications to rights of Noteholders;
- (h) optional, contingent or unscheduled calls of any Notes other than scheduled sinking fund redemptions for which notice is given pursuant to Exchange Act Release 34-23856;
- (i) defeasances;
- (j) release, substitution or sale of property securing repayment of the Notes; and
- (k) rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the county advises with reference to items (c) and (j) above that no debt service reserves secure payment of the Notes and no property secures repayment of the Notes.

4. Notification Upon Failure to Provide Financial Data. The county agrees to provide or cause to be provided, in a timely manner, to each NRMSIR or to the MSRB and to the SID, if any, notice of its failure to provide the annual financial information described in subsection 2 above on or prior to the date set forth in subsection 2 above.

5. Termination/Modification. The county's obligations to provide annual financial information and

notices of material events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Notes. This section, or any provision hereof, shall be null and void if the county (i) obtains an opinion of nationally recognized bond counsel to the effect that those portions of the rule which require this section, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Notes; and (ii) notifies each then existing NRMSIR and the SID, if any, of such opinion and the cancellation of this section.

Notwithstanding any other provision of this motion, the county may amend this section D, and any provision of this section D may be waived, with an approving opinion of nationally recognized bond counsel and in accordance with the rule.

In the event of any amendment or waiver of a provision of this section D, the county shall describe such amendment in the next annual report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the county. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a material event under subsection 3, and (ii) the annual report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

6. Note Owner's Remedies Under This Section. The right of any Note owner or beneficial owner of Notes to enforce the provisions of this section shall be limited to a right to obtain specific enforcement of the county's obligations hereunder, and any failure by the county to comply with the provisions of this undertaking shall not be an event of default with respect to the Notes. For purposes of this section, "beneficial owner" means any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Notes, including persons holding Notes through nominees or depositories.

E. Further Authority. The county officials, their agents, and representatives are hereby authorized and

directed to do everything necessary for the prompt issuance and delivery of the Notes and for the proper use and application of the proceeds of such sale.

F. Severability. The covenants contained in this motion shall constitute a contract between the county and the owners of each and every Note. If any one or more of the covenants or agreements provided in this motion to be performed on the part of the county 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 deemed separable from the remaining covenants and agreements of this motion and shall in no way affect the validity of the other provisions of this motion or of the Notes.