



Legislation Text

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Clerk 11/6/2006

A MOTION of the county council approving a bond purchase agreement for a series of the county's sewer revenue bonds in the aggregate principal amount of \$193,435,000 and establishing certain terms of such bonds and a plan of refunding, all in accordance with Ordinance 15385.

WHEREAS, the county council by Ordinance 15385 passed on March 13, 2006 (the "Bond Ordinance"), authorized the issuance and sale of the county's sewer revenue bonds in an aggregate principal amount not to exceed \$150,000,000 to finance a portion of the costs of capital improvements to the county's sewer system (the "Project Bonds") and authorized the issuance and sale of the county's sewer revenue bonds in an aggregate principal amount not to exceed \$200,000,000 to refund certain outstanding sewer revenue bonds (the "Refunding Bonds"), and

WHEREAS, the Bond Ordinance provided that such bonds be sold in one or more series and by negotiated sale or competitive bid as determined by the county's director of finance and business operations (the "Finance Director") in consultation with the county's financial advisors, and

WHEREAS, in May of this year, the county sold a first series of such bonds in the aggregate principal amount of \$124,070,000, representing \$100,000,00 of Project Bonds and \$24,070,000 of Refunding Bonds, and

WHEREAS, the Finance Director has determined that a second series of such bonds in the aggregate principal amount of \$193,435,000 (the "Bonds") be sold by negotiated sale, representing \$50,000,000 principal amount of Project Bonds and \$143,435,000 principal amount of Refunding Bonds, and

WHEREAS, pursuant to the Bond Ordinance, a preliminary official statement dated October 27, 2006,

has been prepared for the sale of the Bonds and the Finance Director has negotiated the sale of the Bonds to Citigroup Global Markets, Inc., Merrill Lynch & Co., A.G. Edwards and Siebert Brandford Shank & Co., LLC (the "Underwriters"), and

WHEREAS, it is in the best interest of the county that the Bonds be sold to the Underwriters on the terms set forth in the attached bond purchase contract, the Bond Ordinance, and this motion, and

WHEREAS, in accordance with the Bond Ordinance, the council wishes to ratify and confirm certain terms of the Bonds and authorize and approve a plan of refunding certain outstanding sewer revenue bonds of the county from proceeds of the Refunding Bonds, as set forth herein;

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

A. Definitions. Except as expressly authorized herein, capitalized terms used in this motion have the meanings set forth in the Bond Ordinance.

B. Approval of Bond Purchase Contract and Authorization of Bonds. The issuance of the Bonds, designated as the King County, Washington, Sewer Revenue and Refunding Bonds, 2006 (Second Series), in the aggregate principal amount of \$193,435,000, and the terms and conditions thereof as set forth in the Bond Purchase Contract attached hereto as Attachment A (the "Purchase Contract") are hereby ratified and confirmed, and the Purchase Contract is hereby approved. The Bonds shall bear interest at the rates set forth in the Purchase Contract and shall conform in all other respects to the terms and conditions specified in the Purchase Contract and Bond Ordinance. The Bonds shall be subject to optional and mandatory redemption as set forth in the Purchase Contract.

In accordance with the Purchase Contract, the council hereby accepts the commitment from Financial Security Assurance Inc. (the "Insurer") to provide a municipal bond insurance policy guaranteeing the scheduled payment of principal of and interest on the Bonds (the "Bond Insurance Policy"). The council further authorizes and directs all proper officers, agents, attorneys and employees of the county to cooperate with the Insurer in preparing such additional agreements, certificates, and other documentation on behalf of the

county as shall be necessary or advisable in providing for the Bond Insurance Policy.

C. Application of Project Bond Proceeds. In accordance with Section 13.A of the Bond Ordinance, there is hereby established a special subaccount within the Construction Account to be designated as the 2006 (Second Series) Construction Subaccount (the "Construction Subaccount"). Proceeds of the Project Bonds (exclusive of accrued interest, if any, which shall be deposited into the Debt Service Account in the Bond Fund) shall be deposited in the Construction Subaccount and applied to pay costs of improvements to the System, in accordance with Section 13.A of the Bond Ordinance, and costs of issuance of the Project Bonds.

D. Refunding and Redemption of Refunded Bonds.

1. Plan of Refunding. In accordance with Sections 14 and 24 of the Bond Ordinance, the Finance Director has determined, in consultation with the county's financial advisors, that proceeds of the Refunding Bonds shall be used to refund the following obligations of the county payable from sewer revenues pursuant to the plan of refunding set forth below and ratified and confirmed hereby:

Refunded 2002A Bonds

<u>Maturity</u> <u>(January 1)Amount</u>	<u>Principal</u> <u>Rate</u>	<u>Interest</u> <u>Call</u>	<u>Date</u>
2017	\$ 930,000	5.50%	01/01/2012
2018	980,000	5.50	01/01/2012
2019	1,005,000	5.50	01/01/2012
2020	1,035,000	5.50	01/01/2012
2021	1,090,000	5.50	01/01/2012

Refunded 1999 Bonds

<u>Maturity</u> <u>(January 1)Amount</u>	<u>Principal</u> <u>Rate</u>	<u>Interest</u> <u>Call</u>	<u>Date</u>
2026	\$ 13,565,000	5.25%	01/01/2009
2030	21,940,000	5.25	01/01/2009
2035	20,290,000	5.25	01/01/2009

Refunded 1996C Bonds

<u>Maturity</u> <u>(January 1)Amount</u>	<u>Principal</u> <u>Rate</u>	<u>Interest</u> <u>Call</u>	<u>Date</u>
2009	\$ 2,900,000	5.25%	01/01/2007
2010	3,080,000	5.25	01/01/2007

2011	3,250,000	5.25	01/01/2007
2012	3,425,000	5.25	01/01/2007
2013	3,630,000	5.25	01/01/2007
2014	1,645,000	5.25	01/01/2007
2017	5,520,000	5.25	01/01/2007
2021	8,920,000	5.25	01/01/2007
2030	28,965,000	5.25	01/01/2007
2032	23,995,000	6.25	01/01/2007

The Refunded Series 2002A Bonds, Refunded Series 1999 Bonds and Refunded Series 1996C Bonds shall be referred to collectively in this motion as the Refunded Bonds. As provided in Section 14 of the Bond Ordinance, the King County 2006 (Second Series) Sewer Revenue Bonds Refunding Account (the "Refunding Account") shall be established and maintained with the Escrow Agent (as identified below). Proceeds of the Refunding Bonds (exclusive of accrued interest, if any, which shall be deposited into the Debt Service Account in the Bond Fund) shall be deposited in the Refunding Account and used, together with other funds of the county, if necessary, to purchase certain Government Obligations (which obligations so purchased are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times that, together with any necessary beginning cash balance, will provide for the payment of:

- (a) the interest on the Refunded 2002A Bonds due and payable on and prior to January 1, 2012; and
- (b) the redemption price (100% of the principal amount) payable on January 1, 2012, of the Refunded 2002A Bonds.
- (c) the interest on the Refunded 1999 Bonds due and payable on and prior to January 1, 2009; and
- (d) the redemption price (101% of the principal amount) payable on January 1, 2009, of the Refunded 1999 Bonds.
- (e) the interest on the Refunded 1996C Bonds due and payable on and prior to January 1, 2007; and
- (f) the redemption price (102% of the principal amount) payable on January 1, 2007, of the Refunded 1996C Bonds.

Any beginning cash balance and the Acquired Obligations shall be irrevocably deposited with the

Escrow Agent in an amount sufficient to defease the Refunded Bonds in accordance with the ordinances authorizing the Refunded Bonds. Any amounts described above that are not provided for in full by such beginning cash balance and the purchase and deposit with the Escrow Agent of the Acquired Obligations shall be provided for by the irrevocable deposit of the necessary amount out of the proceeds of sale of the Bonds or any other money of the county legally available therefor. The proceeds of the Bonds remaining in the Refunding Account after acquisition of the Acquired Obligations and provision for the necessary beginning cash balance shall be utilized to pay expenses of the acquisition and safekeeping of the Acquired Obligations and the costs of issuing the Bonds. The county may, from time to time, transfer, or cause to be transferred, from the Refunding Account any money not thereafter required for the purposes set forth in subparagraphs (a) - (f) above, subject to verification in writing by an independent certified public accountant that such transfer will not result in inadequate funds being available to make the required payments therefrom. The county reserves the right to substitute other securities for the Acquired Obligations in the event it may do so pursuant to Section 148 of the Code and applicable regulations thereunder, upon compliance with the conditions set forth in the Escrow Agreement.

The selection of U.S. Bank National Association as Escrow Agent is hereby ratified and confirmed.

2. Redemption of Refunded Bonds. The county hereby irrevocably sets aside sufficient funds through the purchase of the Acquired Obligations and an initial cash deposit to make the payments specified in subparagraphs (a) - (f) above.

The county hereby irrevocably defeases and calls for redemption on January 1, 2007, the Refunded 1996C Bonds, on January 1, 2009, the Refunded 1999 Bonds, and on January 1, 2012, the Refunded 2002A Bonds in accordance with the provisions of the ordinances authorizing the redemption and retirement of the Refunded Bonds prior to their fixed maturities.

Said defeasance and call for redemption of the Refunded Bonds shall be irrevocable after the final establishment of the Refunding Account and delivery of the Acquired Obligations and the requisite cash

deposit, if any, to the Escrow Agent, except as provided herein relating to the substitution of securities. The Finance Director is authorized and requested to provide whatever assistance is necessary to accomplish such defeasance and redemption.

The Escrow Agent is hereby authorized and directed to notify the fiscal agency of the State of Washington to give notice of the redemption of the Refunded Bonds in accordance with the applicable provisions of the ordinances authorizing their issuance. The Finance Director is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notice therefor. The costs of publication of such notice shall be an expense of the county.

The Escrow Agent is hereby authorized and directed to pay to the fiscal agency or agencies of the State of Washington sums sufficient to make, when due, the payments specified in subparagraphs (a) - (f) above. All such sums shall be paid from the money and the Acquired Obligations deposited with the Escrow Agent pursuant to this motion, and the income therefrom and proceeds thereof. All such sums so paid shall be credited to the Refunding Account. All money and Acquired Obligations deposited with the Escrow Agent and any income therefrom shall be held, invested and applied in accordance with the provisions of the Bond Ordinance and with the laws of the State of Washington for the benefit of the county and the owners of the Refunded Bonds.

3. Findings of Saving and Defeasance. This council hereby finds and determines that the issuance and sale of the Refunding Bonds at this time will effect a savings to the county and ratepayers of the System. In making such finding and determination, the council has given consideration to the interest on and the fixed maturities of the Refunding Bonds and the Refunded Bonds, the costs of issuance of the Refunding Bonds and the known earned income from the investment of the proceeds of sale of the Refunding Bonds pending redemption and payment of the Refunded Bonds.

This council hereby further finds and determines that the Acquired Obligations to be deposited with the Escrow Agent and the income therefrom, together with any necessary beginning cash balance, are sufficient to

defeas and redeem the Refunded Bonds and will discharge and satisfy the obligations of the county with respect to the Refunded Bonds under the ordinances authorizing their issuance and the pledges of the county therein. Immediately upon the delivery of such Acquired Obligations to the Escrow Agent and the deposit of any necessary beginning cash balance, the Refunded Bonds shall be deemed not to be outstanding under their respective authorizing ordinances and shall cease to be entitled to any lien, benefit or security under such ordinances except the right to receive payment from the Acquired Obligations and beginning cash balance so set aside and pledged.

E. Reserve Requirement. In accordance with Section 9.C of the Bond Ordinance, proceeds of the Bonds shall be used to purchase Qualified Insurance in the form of a surety bond (the "Surety Bond") from FSA in an amount sufficient to satisfy the Reserve Requirement with respect to the Bonds. The County agrees to the conditions for obtaining the Surety Bond, including the payment of the premium therefor and the other requirements to be set forth in an agreement to be approved and executed by the Finance Director on behalf of the county. The council further authorizes and directs all proper officers, agents, attorneys and employees of the county to cooperate with the Insurer in preparing such additional agreements, certificates, and other documentation on behalf of the county as shall be necessary or advisable in providing for the Surety Bond.

F. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. In accordance with Section 27 of the Bond Ordinance, this Section F constitutes the county's written undertaking for the benefit of the owners and Beneficial Owners of the Bonds as required by Section (b)(5) of the Rule.

2. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to each NRMSIR and to 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 2007 for the fiscal year ended December 31, 2006):

- (a) Annual financial statements showing year-end fund balance for the County's Water Quality

Enterprise fund prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) and generally of the type included in the official statement for the Bonds under the heading "Appendix C: Excerpts from the County's 2005 Comprehensive Annual Financial Report";

(b) Amount of outstanding Parity Bonds; and

(c) Information regarding customers, revenues and expenses of the sewer system generally in the form set forth in the Official Statement for the Bonds in the table labeled "Historical Customers, Revenues and Expenses."

Items (b) and (c) 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 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, available from 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 the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) 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 Bonds, 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 Bonds;
- (g) Modifications to rights of Bond holders;
- (h) Optional, contingent or unscheduled calls of any Bonds 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 Bonds; and
- (k) Rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the county advises with reference to item (j) above that no property secures payment of the Bonds.

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. Centralized Filing. Any filing required to be made with any NRMSIR or SID pursuant to the county's undertaking may be made by transmitting such filing solely to (i) the Texas Municipal Advisory Council (the "MAC") as provided in <http://www.disclosureusa.org> unless the SEC has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004, or (ii) any other entity for whom the SEC has provided interpretive advice recognizing that a filing solely with such entity shall satisfy an issuer's filing requirements under the Rule.

6. 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 Bonds. 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 that require this section, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; 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 F, and any

provision of this Section F 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 F, 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.

7. Bond Owner's Remedies Under This Section. The right of any Bond owner or Beneficial Owner of Bonds 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 Bonds hereunder. 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 Bonds, including persons holding Bonds through nominees or depositories.

G. Further Authority. The county officials, their agents, attorneys and representatives are hereby authorized and directed to do everything necessary for the prompt issuance and delivery of the Bonds and for the proper use and application of the proceeds of such sale.

H. Severability. If any provision in this motion is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void

and shall be deemed separable from the remaining provisions of this motion and shall in no way affect the validity of the other provisions of this motion or of the Bonds.