



## Legislation Details (With Text)

<b>File #:</b>	2020-0398	<b>Version:</b>	1
<b>Type:</b>	Motion	<b>Status:</b>	Passed
<b>File created:</b>	11/10/2020	<b>In control:</b>	Metropolitan King County Council
<b>On agenda:</b>		<b>Final action:</b>	12/8/2020
<b>Enactment date:</b>		<b>Enactment #:</b>	15771
<b>Title:</b>	A MOTION of the county council approving the issuance of the county's multi-modal limited tax general obligation notes (payable from sewer revenues) in the commercial paper mode and in the aggregate principal amount of not to exceed \$175,000,000 outstanding at any time, approving the delivery of one or more master notes to evidence the county's obligation to pay the principal and interest of notes issued and delivered from time to time, approving an initial issuing and paying agent agreement (mode agreement) and dealer agreement, and establishing certain terms of the notes, all in accordance with Ordinance 19114.		
<b>Sponsors:</b>	Jeanne Kohl-Welles		
<b>Indexes:</b>	Note Sale, Sewer Districts		
<b>Code sections:</b>			
<b>Attachments:</b>	1. Motion 15771, 2. A. Mode Agreement, 3. B. Dealer Agreement		

Date	Ver.	Action By	Action	Result
12/8/2020	1	Metropolitan King County Council	Passed	Pass
11/10/2020	1	Metropolitan King County Council	Deferred	

Clerk 12/03/2020

A MOTION of the county council approving the issuance of the county's multi-modal limited tax general obligation notes (payable from sewer revenues) in the commercial paper mode and in the aggregate principal amount of not to exceed \$175,000,000 outstanding at any time, approving the delivery of one or more master notes to evidence the county's obligation to pay the principal and interest of notes issued and delivered from time to time, approving an initial issuing and paying agent agreement (mode agreement) and dealer agreement, and establishing certain terms of the notes, all in accordance with Ordinance 19114.

### PREAMBLE

Pursuant to Ordinance 19114 passed on June 23, 2020 (the "Ordinance"), the county council

authorized the issuance of junior lien sewer revenue bonds and multi-modal limited tax general obligation bonds (payable from sewer revenues) of the county in an aggregate principal amount not to exceed \$250,000,000 to provide funds for acquiring and constructing improvements to the sewer system. The Ordinance directed the Finance Director to determine, in consultation with the county's financial advisors, whether each Series of Bonds will be issued as Junior Lien Obligations or Multi-Modal LTGO/Sewer Revenue Bonds, the principal amount of each Series of Bonds, whether each Series of Bonds will be structured as Tax-Exempt Obligations or otherwise, whether a Series of Bonds will be sold separately or combined with one or more other Series of the county's bonds and whether each Series of Bonds will be sold by negotiated sale or competitive bid, or to the federal government or other purchaser, and for current or future delivery.

Ordinance 18898, adopted by the council on May 22, 2019, authorizes the issuance of junior lien sewer revenue refunding bonds and multi-modal limited tax general obligation refunding bonds (payable from sewer revenues), including in the commercial paper mode, to provide funds to refund outstanding and future junior lien sewer revenue bonds and multi-modal limited tax general obligation bonds (payable from sewer revenues), and delegated to the Finance Director authority to approve the issuance, and remarketing from time to time, of notes for this purpose in the aggregate principal amount not to exceed the principal amount of the refunding candidate plus the costs of the refunding.

The county desires to establish a commercial paper program for the issuance of multi-modal limited tax general obligation notes (payable from sewer revenues) in the commercial paper mode to provide funds for acquiring and constructing improvements to the sewer system pursuant to the Ordinance and for the purpose of refunding obligations of the sewer system pursuant to the Ordinance, and finds that there will be efficiencies in issuing and marketing

commercial paper notes under the two ordinances as a combined commercial paper program.

The Finance Director has determined that the notes authorized pursuant to the Ordinance should be issued in two Series as commercial paper notes in the aggregate principal amount of not to exceed \$175,000,000 outstanding at any time, in the Commercial Paper Mode, and bear interest at Commercial Paper Rates established for each Commercial Paper Rate Period as determined pursuant to the Issuing and Paying Agent Agreement (Mode Agreement) (the "Mode Agreement") attached as Attachment A to this motion and the Commercial Paper Dealer Agreement (the "Dealer Agreement") attached as Attachment B to this motion.

Due to the nature of commercial paper, one or more master notes are delivered in the maximum principal amount that may be outstanding at any time. Notes evidenced by the master note(s) are issued from time to time for periods up to 270 days and at the end of the period are either remarketed and "rolled" or are paid. Once paid, notes are subsequently re-issued under the master note(s) at any time, again for periods up to 270 days, until the final maturity of the commercial paper program. For clarity, this motion specifies how the maximum principal amount, delegation period and other parameters of the Ordinance apply to the commercial paper mode.

It is in the best interest of the county that the notes be sold and remarketed from time to time on the terms set forth in the Ordinance and this motion.

BE IT MOVED BY THE COUNCIL OF KING COUNTY:

A. Definitions. Capitalized words that are used in this motion but not defined in this motion (including the Mode Agreement attached as Attachment A to this motion) have the meanings set forth in the Ordinance for all purposes of this motion, unless some other meaning is plainly intended. The words and terms defined in the preamble to this motion, as used in this motion, have the meanings assigned such terms in the preamble to this motion, for all purposes of this motion, unless some other meaning is plainly intended. The

following words have the meanings set forth below.

"Aggregate Interest Coverage" means, with respect to any Notes payable from Drawings, as of any date, the aggregate amount of Interest Coverage determined with respect to all Notes payable from Drawings under a Credit Enhancement or Liquidity Facility, including Notes then proposed to be issued as additional Notes payable from Drawings under that Credit Enhancement or Liquidity Facility, including all Commercial Paper Rate Periods then in effect.

"Commercial Paper Rate" means the interest rate determined with respect to a Note in the Commercial Paper Mode during each Commercial Paper Rate Period applicable to that Note in accordance with the Mode Agreement.

"Commercial Paper Rate Period" means, with respect to any Note of a Series bearing interest at a Commercial Paper Rate, each period, which may be from one day to 270 days as determined for such Note, beginning on the Interest Accrual Date, and ending on, and including, a day which immediately precedes the maturity date.

"Dealer" means BofA Securities, Inc. and any additional dealers for the Notes appointed by the Finance Director pursuant to the Ordinance.

"Dealer Agreement" means the commercial paper dealer agreement substantially in the form attached as Attachment B to this motion, and any subsequent written agreement between the county and a Dealer for the services of the Dealer with respect to Notes in the Commercial Paper Mode, approved by the Finance Director pursuant to the Ordinance.

"Drawing" means a request for funds as specified in a Credit Enhancement or Liquidity Facility.

"Final Maturity Date" means December 15, 2050.

"Instruction" has the meaning given such term in Section F of this motion.

"Interest Coverage" means with respect to any Note that is payable from Drawings, a dollar amount determined in accordance with the following formula:  $((R \times P) \div 365) \times (D+15)$ , where R = the Commercial

Paper Rate applicable to such Note, P = the principal amount of such Note bearing interest at such Commercial Paper Rate, and D = the duration (in days) of the Commercial Paper Rate Period applicable to such Note, or such other Interest Coverage set forth in the Mode Agreement.

"Interest Payment Date" means for each Note, the maturity date of such Note.

"Interest Portion" means the dollar amount available through Drawings then in effect to pay interest on the Note.

"Issue Date," with respect to the Notes, means the first date the aggregate principal amount of Notes issued and outstanding equals or exceeds \$100,000.

"Limit" means the dollar amount available through Drawings to pay the principal of the Notes.

"Master Note" means each note delivered to DTC to evidence one or more Series or portions of Series.

"Mode Agreement" means the Issuing and Paying Agent Agreement (Mode Agreement) (the "Mode Agreement") by and between the county and U.S. Bank National Association, as Registrar and Issuing and Paying Agent with respect to the Notes.

"Note Legislation" means the Ordinance and this motion.

"Note Payment Account" has the meaning given such term in Section I of this motion.

"Notes" means the Series A Notes and the Series B Notes. Pursuant to RCW 39.46.020(1), the Notes are Bonds issued pursuant to the Ordinance.

"Provider Repayment Account" means the account of that name created pursuant to Section K of this motion.

"Rate Determination Date" means the date on which the Commercial Paper Rate and maturity date for a Note (other than a Reimbursement Obligation) shall be determined.

"Reimbursement Obligation" means a note delivered to a Credit Provider or Liquidity Provider pursuant to a reimbursement agreement.

"Request" has the meaning given such term in Sections F and G of this motion.

"Series A Notes" means the King County, Washington, Multi-Modal Limited Tax General Obligation Notes (Payable from Sewer Revenues) (Commercial Paper), Series A, which may be referred to in the Commercial Paper Mode as the King County, Washington, Limited Tax General Obligation Notes (Payable from Sewer Revenues) (Commercial Paper), Series A.

"Series B Notes" means the King County, Washington, Multi-Modal Limited Tax General Obligation Notes (Payable from Sewer Revenues) (Commercial Paper), Series B (Taxable), which may be referred to in the Commercial Paper Mode as the King County, Washington, Limited Tax General Obligation Notes (Payable from Sewer Revenues) (Commercial Paper), Series B (Taxable).

"Sum" means, with respect to Notes payable from Drawings, the aggregate principal amount of those Notes plus the balance then outstanding under the Reimbursement Obligation relating to that Credit Enhancement or Liquidity Facility.

B. Authorization and Delivery of Notes. The issuance of the Notes as Bonds under the Ordinance is hereby ratified and approved. The Notes shall be issued as Multi-Modal LTGO/Sewer Revenue Bonds and shall be initially issued in the Commercial Paper Mode, subject to conversion as provided in the Mode Agreement. For the purpose of providing all or a part of the funds necessary to finance or refinance costs of acquiring and constructing improvements to the sewer system, to pay maturing Notes and to pay costs of issuance, the county is hereby authorized to borrow and reborrow from time to time, and to issue multi-modal LTGO/sewer revenue notes (herein collectively referred to as the "Notes") in one or more Series to evidence such borrowing or reborrowing. The aggregate principal amount of Notes authorized pursuant to this motion shall not exceed \$175,000,000 outstanding at any time less the outstanding balance, if any, on any Reimbursement Obligation, outstanding at any time. The Master Note(s) shall be delivered on the Issue Date. For clarity and for the purposes of Section 1 of the Ordinance, the maximum par amount, so long as the Notes are in the Commercial Paper Mode, is a limitation on the maximum principal amount outstanding at any one time and not a cumulative limitation. The Master Notes shall be issued prior to December 31, 2022, pursuant to Section 25.A

of the Ordinance. Notes evidenced by the Master Note(s) may be issued, sold, remarketed, and reissued from time to time (in each case including after December 31, 2022) so long as all Notes mature on or prior to the Final Maturity Date. The Series A Notes are issued as Tax-Exempt Obligations and the Series A Notes are issued as taxable obligations. A single Master Note or Master Notes may evidence Notes issued under this ordinance and Notes issued pursuant to Ordinance 18898, as notes issued under a combined commercial paper program.

C. Designation; Master Notes. Each Series A Note shall be designated "Series A" and shall include additional designations to note any Credit Enhancement or Liquidity Facility available to pay the Series A Note, and any additional designations as shall be approved or requested by the Registrar from time to time (e.g., numerical designations identifying Notes payable from drawings under a particular Credit Enhancement or Liquidity Facility or pursuant the Ordinance or Ordinance 18898). Each Series B Note shall be designated "Series B (Taxable)" and shall include additional designations to note any Credit Enhancement or Liquidity Facility available to pay the Series B Note, and any additional designations as shall be approved or requested by the Registrar from time to time (e.g., numerical designations identifying Notes payable from drawings under a particular Credit Enhancement or Liquidity Facility).

A Master Note shall be issued for each Series and shall be registered initially in the name of "CEDE & Co.," as nominee of DTC. The Registrar shall enter into a Certificate Agreement with DTC, which Certificate Agreement shall be amended by the Registrar to include the Notes. The Certificate Agreement shall supplement the provisions of the Note Legislation with respect to the obligations and duties of the Registrar who shall be bound thereby and shall perform its duties hereunder in accordance therewith.

D. Commercial Paper Issuance Limitations. Notes in the Commercial Paper Mode shall comply with all of the following requirements:

1. No Note shall be issued with a maturity date later than 270 days from its date of issuance of the Instruction by the Registrar;

2. Each maturity date shall be a Business Day;

3. If a Note is payable from Drawings, such Note must have a maturity date at least one Business Day prior to the stated expiration date of the applicable Credit Enhancement or Liquidity Facility then in effect; and

4. No Note may be issued under the Note Legislation (in the Commercial Paper Mode or otherwise) with a maturity later than the Final Maturity Date.

E. Determination of Commercial Paper Rates and Commercial Paper Rate Periods. In accordance with the Dealer Agreement, the Dealer shall determine a Commercial Paper Rate and a maturity date for each Note in compliance with the requirements set forth in Section C.

Interest on a Series A Note during any Commercial Paper Rate Period shall accrue on the basis of the actual number of days elapsed in a 365-day year (or a 366-day year in a leap year) and interest on a Series B Note during any Commercial Paper Rate Period shall accrue on the basis of the actual number of days in a 360-day year (comprised of 12 30-day months). Interest on a Series of the Notes during any Commercial Paper Rate Period shall be payable on the Interest Payment Date for the period commencing on the Interest Accrual Date and ending on the last day of the Commercial Paper Rate Period for such Notes. Any Note may accrue interest at a Commercial Paper Rate for a Commercial Paper Rate Period different from any other Note. Interest on each Note shall be paid on its maturity date.

Not later than 3:30 p.m., New York City time (or such other time specified in a Dealer Agreement), on each Rate Determination Date, each Dealer shall provide to the Registrar the principal amount, Series, any additional designation within a Series, and Commercial Paper Rate for each Note sold by such Dealer. The Registrar shall obtain CUSIP numbers for each Note for which a Commercial Paper Rate and Commercial Paper Interest Period have been determined on such date.

F. Delivery of Notes; Instructions in Book-Entry Form. So long as the Notes in the Commercial Paper Mode are held in book-entry form by DTC or a successor Securities Depository, the Finance Director



may from time to time submit or have the Dealer submit to the Registrar a request regarding the issuance of Notes which shall include the Series designation, the proposed date of issuance, principal amount, maturity date, Commercial Paper Rate, identity and type of any Credit Enhancement or Liquidity Facility, and information regarding the purchaser(s) of interests in Notes (the "Request"). A copy of each Request shall be given to any Credit Provider whose Credit Facility secures the Note and any Liquidity Provider whose Liquidity Facility may be drawn upon to pay the Note.

Upon receipt of a Request, the Registrar shall:

1. prepare an instruction for DTC or a successor Securities Depository (the "Instruction") that sets forth the name, address, and identity of the Credit Provider or Liquidity Provider, if any, and taxpayer identification number of the purchaser of an interest in the Notes, the date of issuance, maturity date, principal amount and Commercial Paper Rate, and a CUSIP number;
2. deliver such Instruction in accordance with the Letter of Representations and other applicable DTC procedures (or in accordance with the procedures of a successor Securities Depository), and receive a confirmation that such delivery was effected; and
3. confirm to the county and the Dealer that delivery of each Instruction has been made.

All Requests given to the Registrar shall be given by telephone (promptly confirmed in writing), facsimile or other written form. The Registrar shall have no duty to act in the absence of written instructions.

If a Registrar receives a Request by 12:00 p.m., New York City time, on any Business Day, it shall issue an Instruction by 12:30 p.m., New York City time, on such Business Day. If a Registrar receives a Request after 12:00 p.m., New York City time, it shall issue an Instruction by 12:30 p.m., New York City time, on the next succeeding Business Day. The foregoing times may be modified in accordance with the terms of an approved Dealer Agreement.

G. Delivery of Notes; Instructions in Certificated Form. If at any time the Notes are no longer held in book-entry form by DTC or a successor Securities Depository, and the county has determined pursuant to the

Ordinance that the Notes should be issued in certificated form, the county shall provide the Registrar a supply of Note certificates in substantially the form set forth in the Ordinance, with the Series designation, issue date, maturity date, principal amount, interest rate and interest amount left blank. Such Note certificates shall be executed in accordance with the Ordinance and shall be held in safekeeping by the Registrar.

The Dealer, as designated agent for the county, or the Finance Director may from time to time, in accordance with the Note Legislation, submit to the Registrar a Request regarding the issuance of Notes in certificated form.

Upon receipt of such a Request, the Registrar shall:

1. withdraw the necessary number of Notes from safekeeping;
2. in accordance with the Request, complete each such Note as to the Series designation, the amount of principal, the Commercial Paper Rate and Commercial Paper Rate Period, the issue date, the maturity date and registered owner;
3. authenticate each such Note by executing by manual or facsimile signature the certificate of authentication thereon; and
4. deliver, as provided herein, each such Note to the Dealer for delivery to the purchaser specified in such instructions or to the consignee to or for the account of the purchaser thereof, against receipt of payment to the Note Payment Account, and confirm to the county and the Dealer delivery of such Notes.

H. Limitation on Delivery. A Registrar shall not be instructed to deliver any certificated Note that:

1. is not in an Authorized Denomination;
  2. has a maturity date that does not comply with the maturity date requirement in Section C;
- or
3. with respect to any Instruction regarding Notes payable from Drawings under any Credit Enhancement, would result in the Aggregate Interest Coverage with respect to all Outstanding Notes payable from a particular Credit Enhancement being greater than the Interest Portion with respect to such Credit

Enhancement or the Sum with respect to all Outstanding Notes payable from a particular Credit Enhancement being greater than the Limit with respect to such Credit Enhancement.

Prior to each issuance of any Note payable from Drawings under a Credit Enhancement, the county shall confirm that (taking into account such issuance and the refunding of maturing Notes) the Aggregate Interest Coverage with respect to all Outstanding Notes payable from a particular Credit Enhancement will be less than or equal to the Interest Portion with respect to such Credit Enhancement and the Sum with respect to all Outstanding Notes payable from a particular Credit Enhancement will not exceed the Limit with respect to such Credit Enhancement.

I. Note Payment Account. The county or each Registrar shall establish a special account to be used by the Registrar for payment of Notes (the "Note Payment Account"). The Note Payment Account shall be held by the county or Registrar in trust for the Registered Owners and Beneficial Owners of the Notes and, to the extent described herein, for the Credit Provider or Liquidity Provider, if any; provided, however, that all money drawn under a Credit Enhancement or Liquidity Facility shall be held under the exclusive control of the Registrar. The Registrar shall not have a lien on the Note Payment Account for the payment of any fees or expenses or other obligations owing to the Registrar.

For each Note payable from Drawings, the Registrar shall submit to the applicable Credit Provider or Liquidity Provider a Drawing in accordance with the terms of the Credit Enhancement or Liquidity Facility, in such form as is set forth therein, no later than the time specified in the Credit Enhancement or Liquidity Facility, as applicable, in order to draw thereunder an amount that will be sufficient to pay the Notes payable from Drawings (including principal and interest) maturing on such date. The Registrar shall deposit the amount of any such Drawing in the Note Payment Account and apply the amount thereof in accordance with Section J.

For each other Note (i.e., that is not payable from Drawings), the Registrar shall submit to the county, no later than 12:30 p.m., New York City time, a request for an amount that will be sufficient to pay the Notes (including principal and interest) maturing on such date. The Registrar shall deposit such amount in the Note

Payment Account and apply the amount thereof in accordance with Section J.

On any day that Notes payable from Drawings under a Credit Enhancement that is an irrevocable direct-pay letter of credit mature, if the amount of any Drawing received by the Registrar, together with any Note proceeds actually received from the Dealer on such day pursuant to Section J, exceeds the amount of principal and interest paid with respect to the Notes maturing on such day, the Registrar shall promptly distribute the excess to the county, unless the Credit Provider is then owed financial obligations under the Reimbursement Obligation.

On any day that other Notes (i.e., that are not payable from Drawings under a Credit Enhancement that is an irrevocable direct-pay letter of credit) mature, if the amount of any Drawing received by the Registrar, together with any Note proceeds actually received from the Dealer on such day pursuant to Section J, exceeds the amount of principal and interest paid with respect to the Notes maturing on such day, the Registrar shall promptly distribute the excess to the county.

If the Registrar fails to receive a payment drawn under a Credit Enhancement or Liquidity Facility, the Registrar will notify the county of the amount of the deficiency, and the county will remit an amount sufficient to remedy the deficiency from the Multi-Modal LTGO/Sewer Revenue Bond Fund. There is no expectation that county money and proceeds of a Drawing will ever be on deposit at the same time in the Note Payment Account. If, for any reason, money is received from a Credit Provider or Liquidity Provider and the county, the Registrar is hereby directed to segregate and not commingle the moneys.

If Notes are payable from Drawings, then that Credit Enhancement or Liquidity Facility may not be replaced except upon a date on which all outstanding Notes then payable from Drawings under such Credit Enhancement or Liquidity Facility are scheduled to mature. All Notes payable from Drawings under a Credit Enhancement or Liquidity Facility will be paid from Drawings upon the applicable Credit Enhancement or Liquidity Facility currently in effect and such Credit Facility or Liquidity Facility, as applicable, will not be released until such draws are honored.

J. Mechanics for Payment of Matured Notes. So long as the Notes are held in book-entry form, the Registrar will pay the principal of and interest on matured Notes to DTC in accordance with the Letter of Representations and other applicable DTC or successor Securities Depository procedures. Such payments shall be made from and to the extent that sufficient funds are available in the Note Payment Account for a given Series from the following sources in the following order of priority:

1. amounts received from a Drawing on a direct-pay letter of credit;
2. proceeds of the sale of Notes;
3. amounts from a Drawing not on a direct-pay letter of credit; and
4. amounts received from the county.

The Registrar shall have no obligation to pay, at maturity, the amounts referred to in this Section unless sufficient funds have been received by the Registrar.

The Registrar shall confirm in writing to the county and to the Dealer by 3:00 p.m., New York City time, on each Business Day prior to a day on which Notes marketed by that Dealer mature (i) the aggregate principal amount of Notes marketed by that Dealer maturing on such day and the interest due thereon and (ii) the aggregate principal of and the interest to accrue to maturity on all outstanding Notes marketed by that Dealer that mature after such day.

The county shall give the Dealer, Credit Provider, Liquidity Provider, and Registrar notice at least three Business Days prior to any date on which it wishes to increase or decrease the aggregate principal amount of Notes outstanding.

K. Provider Repayment Account. The Registrar shall establish a special account to be used by the Registrar for payments to the Credit Provider or Liquidity Provider with respect to Drawings under a Credit Enhancement or Liquidity Facility ("Provider Repayment Account"). The Provider Repayment Account shall be held by the Registrar in trust for the benefit of the Credit Provider or Liquidity Provider, as applicable, unless that Credit Provider or Liquidity Provider fails to honor a Drawing, in which case this account shall be held in

trust for the benefit of the holders of the Notes to be paid from such Credit Enhancement or Liquidity Facility. The Registrar shall give notice to the county of any Note proceeds credited to a Provider Repayment Account pursuant to Section J and shall promptly pay such amounts to the Credit Provider or Liquidity Provider, provided that such Credit Provider or Liquidity Provider, as applicable, has not refused to honor a properly presented Drawing. The county shall have no right to receive money held in the Provider Repayment Account.

L. Delivery and Application of Note Proceeds. No later than 2:30 p.m., New York City time, on the day that any Notes are issued hereunder and upon receipt of Notes from DTC or a successor Securities Depository, the Dealer shall deliver to the Registrar the proceeds of the sale of such Notes in immediately available funds. The Registrar shall apply proceeds from the sale of each Series of Notes in the following order of priority:

1. First, to the extent of any deficiency therein as a result of a failure by the Credit Provider or Liquidity Provider to honor a Drawing, credited to the Note Payment Account for the payment of Notes of the same Series maturing on such date;
2. Second, credited to the Provider Repayment Account for the reimbursement of the Credit Provider or Liquidity Provider, as applicable, and satisfaction of the county's obligations under the Reimbursement Obligation; and
3. Third, paid to the county.

M. Use of Moneys in the Multi-Modal LTGO/Sewer Revenue Bond Fund and Moneys Drawn Under a Credit Enhancement or Liquidity Facility. Money in the Multi-Modal LTGO/Sewer Revenue Bond Fund shall be used solely for the payment of the principal of and interest on the Notes and the Reimbursement Obligations as the same shall become due and payable as provided in the Ordinance. The county is obligated to pay the principal of and interest on the Notes when due. Funds for the payment of the principal of and interest on the Notes shall be derived by the county from the following sources in the order of priority indicated:

1. Drawings on an irrevocable direct-pay letter of credit, for the payment of the principal of

or interest on the Notes secured by a Credit Enhancement;

2. proceeds from the sale of other Notes of the same Series;
3. Drawings that are not on an irrevocable direct-pay letter of credit for the payment of the principal of or interest on the Notes; and
4. payments made by the county pursuant to the Ordinance.

Each direct-pay Credit Enhancement or Liquidity Facility shall be the obligation of the Credit Provider or Liquidity Provider, as applicable, to pay to the Registrar, in accordance with the terms thereof, such amounts as shall be specified therein and available to be drawn thereunder for the timely payment of the principal of and interest on all or any portion of the Notes. Money drawn under each Credit Enhancement or Liquidity Facility by the Registrar shall be held by the Registrar separate and apart and shall not be commingled with any county funds. Such money shall not be invested. Each Credit Enhancement or Liquidity Facility shall be reduced to the extent of any Drawings thereunder and reinstated in accordance with the terms thereof.

N. Enforcement of Rights. The Registered Owner of each of the Notes, any Credit Provider or Liquidity Provider, or a trustee for the Registered Owners of any of the Notes may by mandamus or other appropriate proceeding require the transfer and payment of money as directed in the Note Legislation.

O. Application of Commercial Paper Proceeds. In accordance with Section 16.A of the Ordinance, there has been established for the Notes a special subaccount within the Construction Account (the "Construction Subaccount"). Money in the Construction Subaccount will be held and applied to pay costs of acquiring, constructing and equipping improvements, additions or betterments to the System as set forth in the Comprehensive Plan and the Capital Improvement Budget and all costs incidental thereto, including engineering, architectural, planning, financial, legal, urban design or any other incidental costs, and to repay any advances heretofore or hereafter made on account of such costs, provided that if deficiencies exist in the Multi-Modal LTGO/Sewer Revenue Bond Fund, money in the Construction Subaccount may be transferred to such fund in any amounts necessary to pay principal of and interest on the Notes.

The amount allocated by the Finance Director to pay the costs of issuing the Notes will be deposited in the appropriate fund or account of the county (as determined by the Finance Director) and used for such purpose. The balance of the proceeds of the Notes will be deposited in the Construction Subaccount as provided in this section and applied as provided in this section.

P. Satisfaction of Parity Conditions. In accordance with the Ordinance and the provision of the ordinances authorizing the issuance of the outstanding Multi-Modal LTGO/Sewer Revenue Bonds, which permit the issuance of Future Multi-Modal LTGO/Sewer Revenue Bonds (a) for the purpose of refunding any Junior Lien Obligations or Multi-Modal LTGO/Sewer Revenue Bonds then outstanding or (b) for any lawful purpose of the county related to the System upon compliance with the conditions set forth therein, the county council hereby finds and determines, as follows:

1. The Notes are Balloon Maturity Bonds, and the principal amount of the Notes is the maximum principal amount of the Notes outstanding at any time (\$175,000,000).
2. There is no default in the payment of the principal of or interest on any Parity Bonds, Parity Lien Obligations, Junior Lien Obligations, Multi-Modal LTGO/Sewer Revenue Bonds, Future Subordinate Lien Obligations, SRF Loans or Public Works Trust Fund Loans.
3. The county will have on file on the Issue Date one of the following certificates:
  - a. A certificate of the Finance Director showing that Net Revenue in any 12 consecutive months out of the most recent 18 months preceding the issuance of the Notes, based on financial statements of the System prepared by the county and after deducting therefrom the Senior Lien Payments required in each calendar year during the life of such Future Junior Lien Obligations or Future Multi-Modal LTGO/Sewer Revenue Bonds, will be at least equal to 1.10 times the Annual Debt Service for the Notes and all Junior Lien Obligations and Multi-Modal LTGO/Sewer Revenue Bonds then outstanding in each year during the life the Notes; or
  - b. A certificate from a Professional Utility Consultant (which certificate may not be



dated more than 90 days prior to the date of delivery of the Notes) showing that in the Professional Utility Consultant's professional opinion the Net Revenue, estimated on the basis of all factors as the Professional Utility Consultant may consider reasonable, for each of the five calendar years following the year in which the Notes are to be issued, after deducting therefrom Senior Lien Payments for each such year, will be at least equal to 1.10 times the Annual Debt Service for the Notes and all Junior Lien Obligations and Multi-Modal LTGO/Sewer Revenue Bonds then outstanding in each of those five years.

The applicable conditions for Future Multi-Modal LTGO/Sewer Revenue Bonds having been complied with in connection with the issuance of the Notes, the pledge contained in the Ordinance of Revenue of the System to pay and secure the payment of the Notes will constitute a lien and charge on Revenue of the System equal in rank with the lien and charge on the Revenue of the System to pay and secure the payment of the outstanding Multi-Modal LTGO/Sewer Revenue Bonds.

Q. Designation as Refunding Candidates. The Notes are hereby designated as "Refunding Candidates" for purposes of ordinances of the county authorizing the issuance of bonds to refund outstanding obligations of the county payable from Revenue of the System.

R. Approval of Mode Agreement, Dealer Agreement and Other Agreements. The Finance Director is hereby authorized to execute and deliver the Mode Agreement substantially in the form attached as Attachment A to this motion, and the Dealer Agreement substantially in the form attached as Attachment B to this motion. The Finance Director is further authorized to execute closing certificates, agreements and other documents necessary to effectuate the issuance and sale of the Notes.

S. Further Authority. The officials of the county and their agents, attorneys 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 the sale of the Notes.

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

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