



Legislation Text

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Clerk 03/16/2009

A MOTION of the county council approving a bid for the county's Limited Tax General Obligation Bonds (Payable from Sewer Revenues), 2009, in the aggregate principal amount of \$300,000,000 and establishing certain terms of such bonds, all in accordance with Ordinance 16133.

WHEREAS, the county council by Ordinance 16133 passed on June 17, 2008 (the "Bond Ordinance"), authorized the issuance and sale of bonds of the county in the aggregate principal amount of not to exceed \$900,000,000 (the "Project Bonds") to pay costs of certain capital improvements to the county's sewer system (the "System"), in accordance with the county's comprehensive water pollution abatement plan and not to exceed \$200,000,000 (the "Refunding Bonds") to refund certain outstanding sewer revenue 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 division (the "Finance Director") in consultation with the county's financial advisors; and

WHEREAS, the Finance Director has determined that \$300,000,000 principal amount of Project Bonds be sold in a series of such bonds in the aggregate principal amount of \$300,000,000 to be designated as the county's Limited Tax General Obligation Bonds (Payable from Sewer Revenues, 2009 (the "Bonds")), to be sold by competitive bid; and

WHEREAS, pursuant to the Bond Ordinance, a preliminary official statement dated March 9, 2009, has been prepared for the sale of the Bonds, the Official Notice of Bond Sale (the "Notice") has been published, and bids have been received in accordance with the Notice; and

WHEREAS, the attached bid of Barclays Capital, Inc. (the "Purchaser") to purchase the Bonds is the best bid received for the Bonds, and it is in the best interest of the county that the Bonds be sold to the Purchaser on the terms set forth in the attached bid, 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, 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. Ratification of Notice of Sale, Acceptance of Bid and Authorization of Bonds. The issuance of the Bonds, designated as set forth in the recitals of this motion, and the terms and conditions thereof as set forth in the Official Notice of Bond Sale, attached hereto as Attachment A (the "Notice"), are hereby ratified and confirmed, and Purchaser's bid to purchase the Bonds, as set forth on Attachment B (the "Bid"), is hereby accepted. The Bonds shall bear interest at the rates set forth in the Bid and shall conform in all other respects to the terms and conditions specified in the Notice, Bid and Bond Ordinance and in the final maturity schedule set forth on Attachment C. The Bonds shall be subject to redemption as set forth in the Notice and Bid.

C. Application of Project Bond Proceeds. In accordance with Section 15.A of the Bond Ordinance, there is hereby established a special subaccount within the Construction Account to be designated as the Series 2009 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 and costs of issuance of the Project Bonds, in accordance with Section 15.A of the Bond Ordinance.

D. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. In accordance with Section 31 of the Bond Ordinance, this Section D 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 2009 for the fiscal year ended December 31, 2008):

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 ("BARS") 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 2007 Comprehensive Annual Financial Report";

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;

f. A schedule of the aggregate annual debt service on tax-supported indebtedness of the County; and

g. Information regarding customers, revenues and expenses of the Sewer System as set forth in the table under the heading "The Sewer System--Historical Customers, Revenues and Expenses."

Items b through g 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 BARS 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 uncheduled 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 items (c) and (j) above that no debt service reserves secure payment of the Bonds and 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 and operating data described in subsection 2 above on or prior to the date set forth in subsection 2 above.

5. Centralized Filing. Until July 1, 2009, 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 or until the SEC withdraws its approval of this submission process. On and after July 1, 2009, any filing required to be made by the County pursuant to this undertaking will be made to the MSRB, as the sole NRMSIR, through its Electronic Municipal Market Access system ("EMMA"). The SEC announced this change in December 2008 in connection with its amendments to Rule 15c2-12.

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 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.

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.

E. 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.

F. 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.