



Legislation Text

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Clerk 07/27/2009

A MOTION of the county council approving a bond purchase agreement for the county's Sewer Revenue Bonds, 2009, in the aggregate principal amount of \$250,000,000 and establishing certain terms of such bonds, all in accordance with Ordinance 16133.

WHEREAS, the county council by Ordinance 16133 passed on June 16, 2008 (the "Bond Ordinance"), authorized the issuance and sale of sewer revenue 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 advisor, and

WHEREAS, of the \$900,000,000 in authorized Project Bonds, the county issued \$350,000,000 in August 2008 and \$300,000,000 in April 2009, and

WHEREAS, the Finance Director has determined that \$250,000,000 principal amount of Project Bonds be sold in a final series of such bonds in the aggregate principal amount of \$250,000,000 to be designated as the county's Sewer Revenue Bonds, 2009 (the "Bonds"), by negotiated sale, and

WHEREAS, pursuant to the Bond Ordinance, a preliminary official statement dated July 14, 2009, has

been prepared for the sale of the Bonds, and the Finance Director has negotiated the sale of the Bonds to Barclays Capital Inc. as representative of itself and other underwriters named in the attached bond purchase contract (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, 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 set forth in the recitals of this motion, 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 redemption as set forth in the Purchase Contract.

C. Application of Project Bond Proceeds; Satisfaction of Reserve Requirement. 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 2009 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 Parity Bond Fund) shall be deposited in the Construction Subaccount and applied to pay costs of improvements to the System, capitalized interest and costs of issuance of the Bonds, in accordance with Section 15.A of the Bond Ordinance.

In accordance with Section 9.C of the Bond Ordinance, proceeds of the Bonds shall be deposited into the Parity Bond Reserve Account in an amount sufficient to satisfy the Reserve Requirement with respect to the Bonds.

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 the Municipal Securities Rulemaking Board (the "MSRB"), 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, which may or may not be audited, 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 statutes) and generally of the type included in the official statement for the Bonds under the heading "Appendix C: King County Water Quality Enterprise 2007 Audited Financial Statements";

b. Amount of outstanding Parity Bonds; and

c. Information regarding customers, revenues and expenses of the Sewer System as set forth in the table titled "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.

The 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 the MSRB. In lieu of providing such annual financial information and operating data, the county may cross-refer to other documents

available to the public on the Internet Website of 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 the MSRB.

3. Material Events. The county agrees to provide or cause to be provided, in a timely manner, 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 d, e and j above that no credit enhancement, liquidity facility or property secures repayment 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 the MSRB, 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. EMMA: Format for Filings with the MSRB. Until otherwise designated by the MSRB or the Commission, any information or notices submitted to the MSRB in compliance with the Rule are to be submitted through MSRB's Electronic Municipal Market Access system ("EMMA"), currently located at www.emma.msrb.org <<http://www.emma.msrb.org>>. All notices, financial information and operating data required by this undertaking to be provided to the MSRB must be in an electronic format as prescribed by the MSRB. All documents provided to the MSRB pursuant to this undertaking must be accompanied by identifying information as prescribed by the MSRB.

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 the MSRB of such opinion and the cancellation of this section.

Notwithstanding any other provision of the Bond Ordinance or 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 Owners' 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.