



Legislation Text

File #: 2008-0412, **Version:** 1

Clerk 07/30/2008

A MOTION accepting a bid for the purchase of the county's Limited Tax General Obligation (Public Transportation Sales Tax) Refunding Bonds, 2008, in the aggregate principal amount of \$_____, and establishing certain terms of such bonds, all in accordance with Ordinance _____.

WHEREAS, the county council by Ordinance _____ passed _____, 2008 (the "Bond Ordinance"), authorized the issuance and sale of limited tax general obligation (public transportation sales tax) refunding bonds (the "Bonds") of the county in the aggregate principal amount of not to exceed \$103,000,000 to currently refund all or a portion of the county's outstanding Limited Tax General Obligation (Public Transportation Sales Tax) Refunding Bonds, 1998, Series A, and to advance refund all or a portion of the county's outstanding Limited Tax General Obligation (Public Transportation Sales Tax) Bonds, 2004, all consistent with the ordinances authorizing those bonds, Ordinance 13128 and Ordinance 14490 (collectively, the "Refunded Bonds Ordinances"), and

WHEREAS, the Bond Ordinance provided that the Bonds be sold 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, the Finance Director has determined that the Bonds be sold [by competitive bid] [by negotiated sale], and

WHEREAS, pursuant to the Bond Ordinance, [the Finance Director has negotiated the sale of the Bonds to _____ (the "Underwriter"), and] a preliminary official statement dated _____, 2008 (the

"Preliminary Official Statement"), has been prepared for the [public] sale of the Bonds[, the official notice of such sale (the "Notice of Sale") has been duly published, and bids have been received in accordance with the Notice of Sale], and

[WHEREAS, after the Finance Director's review and analysis of the bids received, the council, deems it necessary and desirable to authorize the sale of the Bonds in the principal amount of \$_____ to _____, of _____ (the "Underwriter"), as the bidder offering the lowest true interest cost therefor;], and

WHEREAS it is in the best interest of the county that the Bonds be sold to the Underwriter on the terms set forth in [the bond purchase agreement,] the Bond Ordinance and this motion;

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 [Winning Bid] [Bond Purchase Agreement] and Authorization of Bonds. The issuance of the Bonds, designated as the county's Limited Tax General Obligation (Public Transportation Sales Tax) Refunding Bonds, 2008, in the aggregate principal amount of \$_____ and the terms and conditions [set forth in the Official Notice of Bond Sale (the "Notice"), attached hereto as Exhibit ___,] [thereof as set forth in the Bond Purchase Agreement attached hereto as Exhibit ___ (the "Purchase Agreement")] are hereby ratified and confirmed, [and the bid to purchase the Bonds set forth in the Underwriter's bid, attached hereto as Exhibit ___, is hereby accepted. All other bids that have been received are attached hereto as Exhibit _____.] [and the Purchase Agreement is hereby approved]. The Bonds shall mature on the dates, and shall bear interest at the rates, payable on the dates, set forth in [Exhibit ___] [the Purchase Agreement] and shall conform in all other respects to the terms and conditions specified in the [Notice] [Purchase Agreement] and the Bond Ordinance. The Bonds shall be subject to optional redemption as set forth in the [Notice] [Purchase Agreement].

[Following receipt of the Underwriter's bid, the county has exercised its right under the Notice to adjust

the maturity amounts of the Bonds. Accordingly, the Bonds shall mature or be subject to mandatory redemption on _____ 1 in the years and amounts and bear interest at the rates per annum as follows:

<u>Years</u>	<u>Amounts</u>	<u>Interest Rates]</u>
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C. Refunding of Refunded Bonds.

1. Plan of Refunding. The proper county officials are authorized to carry out the refunding of the Refunded Bonds in accordance with Section 16 of the Bond Ordinance. The amounts, maturities and redemption dates of the Refunded Bonds and the amounts, maturities and interest rates of the Government Obligations to be acquired to accomplish the refunding thereof are identified in Exhibit _____. The Finance Director is authorized to transfer money in the Receiving Fund allocable to the _____ 1, 2008, debt service payment on the Refunded Bonds (or such lesser amount as the Finance Director shall determine) to the Escrow Agent to carry out the refunding of the Refunded Bonds.

2. Escrow Agent. The selection of _____ of _____, Washington, as Escrow Agent is hereby ratified and confirmed.

3. Findings of Savings and Defeasance. The council finds and determines that a substantial savings will be effected by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded Bonds but for such refunding, and 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 defease and redeem the above-referenced Refunded Bonds and will discharge and satisfy the obligations of the county with respect to such Refunded Bonds under the Refunded Bonds Ordinances 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 the Refunded Bonds Ordinances and shall cease to be entitled to any lien, benefit or security thereunder except the right to receive payment from the Acquired Obligations and beginning cash balance so set aside and pledged.

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 Bonds as required by Section (b)(5) of the Rule.

2. Undertaking to Provide Annual Financial Information and Notice of Material Events. The County undertakes to provide or cause to be provided, either directly or through a designated agent:

(a) To each nationally recognized municipal securities information repository designated by the SEC in accordance with the Rule ("NRMSIR") and to a state information depository, if any, established in the State of Washington (the "SID") annual financial information and operating data of the type included in the final official statement for the Bonds and described in subsection (b) of this section ("annual financial information");

(b) To each NRMSIR or the Municipal Securities Rulemaking Board ("MSRB"), and to the SID, timely notice of the occurrence of any of the following events with respect to the Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds; (7) modifications to rights of holders of the Bonds; (8) Bond calls (other than scheduled mandatory redemptions of Term Bonds); (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds; and (11) rating changes; and

(c) To each NRMSIR or to the MSRB, and to the SID, timely notice of a failure by the County to provide required annual financial information on or before the date specified in subsection (b) of this section.

3. Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the County undertakes to provide in subsection (a) of this section:

(a) Shall consist of (1) 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 statute) and generally of the type included in the official statement for the Bonds under the heading "Appendix ____: Audited 200__ Financial Statements"; (2) a summary of budgeted general fund revenues and appropriations; (3) a summary of the assessed valuation of taxable property in the county; (4) a summary of the *ad valorem* property tax levy and delinquency rate; (5) a schedule of the aggregate annual debt service on tax-supported indebtedness of the county; (6) a summary of outstanding tax-supported indebtedness of the county; and (7) Public Transportation Sales Taxes collected by the county pursuant to RCW 82.14.045.

Items (2) through (7) shall be required only to the extent that such information is not included in the annual financial statements.;

(b) Shall be provided to each NRMSIR and the SID, not later than the last day of the ninth month after the end of each fiscal year of the County (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the County's fiscal year ending December 31, 2008; and

(c) May be provided in a single or multiple documents, and may be incorporated by reference to other documents that have been filed with each NRMSIR and the SID, or, if the document incorporated by reference is a "final official statement" with respect to other obligations of the County, that has been filed with the MSRB.

4. Amendment of Undertaking. The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency, NRMSIR, the SID or the MSRB, under the circumstances and in the manner permitted by the Rule.

The County will give notice to each NRMSIR or the MSRB, and the SID, of the substance (or provide a

copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

5. Beneficiaries. The Undertaking evidenced by this section shall inure to the benefit of the County and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

6. Termination of Undertaking. The County's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the County's obligations under this Undertaking shall terminate if those provisions of the Rule which require the County to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the County, and the County provides timely notice of such termination to each NRMSIR or the MSRB and the SID.

7. Remedy for Failure to Comply with Undertaking. As soon as practicable after the County learns of any failure to comply with the Undertaking, the County will proceed with due diligence to cause such noncompliance to be corrected. No failure by the County or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take such actions as that holder deems necessary, including seeking an order of specific performance from an appropriate court, to compel the County or other obligated person to comply with the Undertaking.

8. Designation of Official Responsible to Administer Undertaking. The Finance Director of the County (or such other officer of the County who may in the future perform the duties of that office) or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the County in respect of the Bonds set forth in this section and in accordance with the Rule, including, without limitation, the following actions:

- (a) Preparing and filing the annual financial information undertaken to be provided;

(b) Determining whether any event specified in subsection (a) has occurred, assessing its materiality with respect to the Bonds, and, if material, preparing and disseminating notice of its occurrence;

(c) Determining whether any person other than the County is an "obligated person" within the meaning of the Rule with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of material events for that person in accordance with the Rule;

(d) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the County in carrying out the Undertaking; and

(e) Effecting any necessary amendment of the Undertaking.

9. Centralized Dissemination Agent. To the extent authorized by the SEC, the County may satisfy the Undertaking by transmitting the required filings using <http://www.disclosureusa.org> (or such other centralized dissemination agent as may be approved by the SEC).

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 Bonds 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 Bond. If any provision 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 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.

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