



Legislation Text

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Clerk 11/15/2010

A MOTION of the county council approving the sale of the county's Limited Tax General Obligation Bonds, 2010, Series D (Federally Taxable Qualified Energy Conservation Bonds), in the aggregate principal amount of \$5,825,000 and the terms and conditions thereof, as set forth in a bond purchase contract therefor, approving and authorizing the execution of such bond purchase contract, and determining the application of the sale proceeds of such bonds, all in accordance with Ordinance 16920.

WHEREAS, pursuant to Ordinance 16920 (the "Ordinance"), the county council authorized the issuance of one or more series of its limited tax general obligation bonds in an outstanding aggregate principal amount not to exceed \$117,000,000 to provide long-term financing for the capital costs of the Atlantic/Central Base Operations Building Project, the Camera Recording System Project, the Data Center Relocation and Contingency Projects, the Data Center Specifications Project, the Earlington HVAC and Roof Energy Project, the IRIS/TESS Replacement Project, the IT Reorganization Project, the Major Maintenance Reserve Fund Projects, the McKinstry Essention Contract Energy Efficiencies Project, the Northeast Novelty Hill Road Project and the North Base HVAC Replacement Project, each defined and described in the Ordinance, and

WHEREAS, the Ordinance provided that such bonds may be issued as Tax-Exempt Obligations, BABs, RZEDBs, QECBs or other Taxable Obligations in one or more series, any of which may be sold in a combined offering with other bonds of the county, publicly, either by negotiated sale or by competitive bid, as determined by the Finance Director in consultation with the county's financial advisors, and

WHEREAS, the Finance Director has determined that a series of such bonds, to be designated as the county's Limited Tax General Obligation Bonds, 2010, Series D (Federally Taxable Qualified Energy Conservation Bonds), in the aggregate principal amount of \$5,825,000 (the "2010D Bonds"), be sold as QECBs, as defined in the Ordinance, to provide long-term financing for all or a portion of the capital costs of the Earlington HVAC and Roof Energy Project and the North Base HVAC Replacement Project, all as provided herein, and

WHEREAS, currently, none of the bonds authorized by the Ordinance are outstanding. The aggregate principal amount of all such bonds (including the 2010D Bonds) to be outstanding on the date of issuance of the 2010D Bonds, will be \$109,875,000, which amount does not exceed \$117,000,000, and

WHEREAS, pursuant to the Ordinance, the Finance Director has negotiated the sale of the 2010D Bonds to Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and Siebert Brandford Shank & Co., LLC (collectively, the "Underwriters"), and a preliminary official statement dated November 5, 2010, has been prepared for the sale of the 2010D Bonds and other series of bonds of the county authorized pursuant to the Ordinance, and

WHEREAS, it is in the best interest of the county that the 2010D Bonds be sold to the Underwriters on the terms set forth in the attached bond purchase contract, the Ordinance and this motion;

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

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

B. Approval of Sale of 2010D Bonds and Purchase Contract. The issuance and sale of the 2010D Bonds, designated as the county's Limited Tax General Obligation Bonds, 2010, Series D (Federally Taxable Qualified Energy Conservation Bonds), in the aggregate principal amount of \$5,825,000, and the other 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 2010D

Bonds shall be QECBs, as defined in the Ordinance, to which the county's irrevocable elections set forth in Section 9.D. of the Ordinance shall apply. The 2010D Bonds shall be dated, shall mature on the dates in each of the years and in the principal amounts, shall bear interest at the rates and payable on the dates, and shall be subject to redemption prior to maturity in the amounts, in the manner and at the prices as set forth in the Purchase Contract. In all other respects, the 2010D Bonds shall conform to the terms and conditions specified in the Purchase Contract and the Ordinance, which terms are hereby ratified and confirmed. The Finance Director is authorized to execute the Purchase Contract on behalf of the county.

C. Application of 2010D Bond Sale Proceeds. The sale proceeds of the 2010D Bonds, net of the underwriters' discount, shall be applied as follows:

1. Earlington HVAC and Roof Energy Project. \$2,800,000.00 shall be deposited into the BCI 2010 G.O.-FMD Subfund within the Building Construction and Improvement Fund to provide long-term financing for all or a portion of the capital costs of the Earlington HVAC and Roof Energy Project.

2. North Base HVAC Replacement Project. \$2,977,063.21 shall be deposited into the Public Transportation Construction Subfund within the Public Transportation Construction Fund to provide long-term financing for a portion of the capital costs of the North Base HVAC Replacement Project.

3. Issuance Costs. The remainder of the net sale proceeds of the 2010D Bonds shall be deposited into the 2010 G.O. Bonds-MMR Subfund within the Major Maintenance Reserve Fund for application to the payment of costs and expenses incurred in issuing the 2010D Bonds.

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 2010D Bonds as required by section (b)(5) of rule 15c2-12 (the "rule") of the Securities and Exchange Commission (the "Commission").

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 2011 for the fiscal year ended December 31, 2010):

(a) 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 statutes) and generally of the type attached to the official statement as "Appendix B," which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the county they will be provided;

(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; and

(f) a schedule of the aggregate annual debt service on tax-supported indebtedness of the county.

Items (b) through (f) 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 the end of 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-reference to other documents available to the public on the MSRB's internet web site or filed with the Commission.

If not provided as part of the annual financial information discussed above, the county shall provide the county's audited annual financial statements 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 not in excess of ten business days after the occurrence of the event, to the MSRB, notice of the occurrence of any of

the following events with respect to the 2010D Bonds:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (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, the issuance by the Internal Revenue Service of proposed or final

determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2010D Bonds, or other material events affecting the tax status of the 2010D Bonds;

- (g) modifications to rights of 2010D Bondholders, if material;
- (h) 2010D Bond calls, if material, and tender offers;
- (i) defeasances;
- (j) release, substitution or sale of property securing repayment of the 2010D Bonds, if material; and
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership, or similar event of the county;
- (m) the consummation of a merger, consolidation or acquisition involving the county or the sale of

all or substantially all of the assets of the county, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of disclosure, and not intending to modify this undertaking, the county advises with reference to items (c), (j) and (n) above that no debt service reserves secure payment of the 2010D Bonds, no property secures repayment of the 2010D Bonds, and there is no trustee for the 2010D 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 described in subsection 2 above on or prior to the date set forth in subsection 2 above.

5. Electronic Format; Identifying Information. The county agrees that all documents provided to the MSRB pursuant to this section D. shall be provided in an electronic format and accompanied by such identifying information, each 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 2010D Bonds. This section D., 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 which require this section D., or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the 2010D Bonds; and (ii) notifies the MSRB of such opinion and the cancellation of this section D.

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. 2010D Bond Owners' Remedies Under This Section D. The right of any 2010D Bond owner or beneficial owner of 2010D Bonds to enforce the provisions of this section D. 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 2010D Bonds. For purposes of this section D., "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 2010D Bonds, including persons holding 2010D Bonds through nominees or depositories.

E. Further Authority. The proper county officials, their agents, and representatives are hereby authorized and directed to do everything necessary for the prompt issuance and delivery of the 2010D Bonds, for the preparation, execution and delivery of the final official statement for the sale of the 2010D Bonds and other series of bonds of the county authorized pursuant to the Ordinance, 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 2010D Bond. If any one or more of the covenants or agreements provided 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 covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this motion and shall in no way affect the validity of the other provisions of this motion or of the 2010D Bonds.