



Legislation Text

File #: 2011-0059, **Version:** 1

Clerk 02/14/2011

A MOTION of the county council accepting a bid for the purchase of the county's Limited Tax General Obligation Bond Anticipation Notes, 2011, Series A, in the aggregate principal amount of \$40,000,000; and establishing certain terms of such notes in accordance with Ordinance 16994.

WHEREAS, pursuant to Ordinance 16994 (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 \$150,000,000 outstanding at any time, to provide funds to pay for the cost of carrying out the Capital Improvement Program for Solid Waste Facilities and the Solid Waste Transfer and Waste Management Plan, and further authorized the issuance and public sale of one or more series of its limited tax general obligation bond anticipation notes in an aggregate principal amount, together with the bonds outstanding, not to exceed \$150,000,000 outstanding at any one time to provide interim financing for such project pending the issuance of the bonds, and

WHEREAS, the Ordinance provided that such bond anticipation notes may be publicly sold in one or more series, either by negotiated sale or by competitive bid, as determined by the Finance Director in consultation with the county's financial advisor, and

WHEREAS, the Finance Director has determined that a series of such bond anticipation notes authorized pursuant to the Ordinance, be designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2011, Series A, in the aggregate principal amount of \$40,000,000 (the "Notes"), be sold as provided herein, and

WHEREAS, currently, none of the bonds authorized by the Ordinance are outstanding. Currently, none of the bond anticipation notes authorized by the Ordinance are outstanding. The aggregate principal amount of all such bonds and bond anticipation notes (including the Notes) to be outstanding on the date of issuance of the Notes will be \$40,000,000, which amount does not exceed \$150,000,000, and

WHEREAS, a preliminary official statement dated February 4, 2011, has been prepared for the public sale of the Notes, the official Notice of such sale dated February 4, 2011 (the "Notice"), has been duly published, and bids have been received in accordance with the Notice, and

WHEREAS, the bid of J.P. Morgan Securities LLC to purchase the Notes (as Attachment B) is the best bid received for the Notes, and it is in the best interest of the county that such Notes be sold to J.P. Morgan Securities LLC on the terms set forth in the Notice, the attached bid, the Bond 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. Ratification of Notice of Sale, Acceptance of Bids, and Authorization of Notes. The issuance of the Notes, designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2011, Series A, in the aggregate principal amount of \$40,000,000, and the other terms and conditions thereof set forth in the Notice attached hereto as Attachment A, are hereby ratified and confirmed.

The offer to purchase the Notes, as set forth in the bid of J.P. Morgan Securities LLC attached hereto as Attachment B, is hereby accepted. All other bids that have been received are attached hereto as Attachment C. The Notes shall be dated their date of issue and delivery, shall mature on March 1, 2012, and shall bear interest payable only at maturity at an interest rate of 2.75% per annum. The Notes are not subject to redemption. The Notes shall conform in all respects to the terms and conditions specified in the Notice and Ordinance.

C. Application of Note Proceeds. All of the proceeds of the Notes shall be deposited into the Solid Waste Construction Fund and applied to provide interim financing for the Capital Improvement Program for

Solid Waste Facilities, and paying costs and expenses incurred in issuing the Notes.

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 Notes as required by section (b)(5) of rule 15c2 12 (the "rule") of the Securities and Exchange Commission (the "commission") (the "Undertaking").

2. Material Events. The county agrees to provide or cause to be provided, either directly or through a designated agent, to the Municipal Securities Rulemaking Board (the "MSRB"), in an electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB, timely notice (not in excess of ten business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Notes:

- 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, Notice of Proposed Issue (IRS Form 5701 - TEB) or other material notices or determinations with respect to the tax status of the Notes;

- g. modifications to rights of holders of the Notes, if material;
- h. bond calls (other than scheduled mandatory redemptions of Term Bonds), if

material, and tender offers;

- i. defeasances;
- j. release, substitution, or sale of property securing repayment of the Notes, if

material;

- k. rating changes;
- l. bankruptcy, insolvency, receivership or similar event of the county (a "Bankruptcy Event");
- 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.

A Bankruptcy Event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the county in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the county, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

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

The county will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment.

4. Beneficiaries. The Undertaking evidenced by this section shall inure to the benefit of the

county and any holder of Notes, and shall not inure to the benefit of or create any rights in any other person.

5. Termination of Undertaking. The county's obligations under this Undertaking shall terminate upon the legal defeasance of the Notes. 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 Notes 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 the MSRB.

6. 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 Notes. The sole remedy of any holder of a Note 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.

7. 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 Notes set forth in this section and in accordance with the Rule, including, without limitation, the following actions:

a. Determining whether any event specified in subsection (2) has occurred, assessing its materiality, where necessary, with respect to the Notes, and preparing and disseminating any required notice of its occurrence;

b. Determining whether any person other than the county is an "obligated person" within the meaning of the Rule with respect to the Notes, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person in accordance with the

Rule;

c. 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

d. Effecting any necessary amendment of the Undertaking.

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 Notes 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 Note. 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 Notes.