



Legislation Text

File #: 2002-0371, **Version:** 2

A MOTION of the county accepting bids for the purchase of the county's Limited Tax General Obligation Bond Anticipation Notes, 2002, in the aggregate principal amount of \$85,000,000; fixing the interest rates and other terms of such Notes, all in accordance with Ordinance 14167 of the county.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

WHEREAS, the county council by Ordinance 14167 passed July 16, 2001 (the "Note Ordinance"), authorized the issuance and sale of limited tax general obligation bond anticipation notes of the county in an outstanding aggregate principal amount of not to exceed \$125,000,000, and

WHEREAS, the Note Ordinance provided that such bond anticipation notes be sold in one or more series at public sale as determined by the Finance Director, and

WHEREAS, the Finance Director has determined that a series of such bond anticipation notes to be designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2002 (the "Notes") be sold as provided herein, and

WHEREAS, pursuant to the Note Ordinance, a preliminary official statement dated September 5, 2002 has been prepared for the public sale of the Notes, the official Notice of such sale (the "Notice") has been duly published, and bids have been received in accordance with the Notice, and

WHEREAS, the attached bid of Morgan Stanley, Dean Witter ("Morgan Stanley") to purchase the Notes is the best bid received for such Notes, and it is in the best interest of the county that such Notes be sold to Morgan Stanley on the terms set forth in the Notice, the attached bid, the Note 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 Note 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, 2002, in the aggregate principal amount of \$85,000,000 and the terms and conditions thereof set forth in the Notice, attached hereto as Exhibit A, are hereby ratified and confirmed, and the bid to purchase the Notes, as set forth in the purchaser's bid attached hereto as Exhibit B, are hereby accepted. The Notes shall bear interest at the rates set forth on Exhibit B and shall conform in all other respects to the terms and conditions specified in the Notice and Note Ordinance. The Notes shall mature on October 1, 2003.

The Notes shall not be subject to redemption.

C. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. This section C 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").

2. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information depository (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 2003 for the fiscal year ended December 31, 2002):

(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 included in the official statement for the Notes under the heading "Appendix B: Audited Financial Statements," 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) the assessed valuation of taxable property in the county;
- (c) the property taxes due, percentage of taxes collected and property taxes delinquent;
- (d) property tax levy rates per \$1,000 of assessed value; and
- (e) outstanding general obligation debt 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 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, such document will be available from the Municipal Securities Rulemaking Board (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 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 Notes, 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 Notes;
- (g) modifications to rights of Noteholders;
- (h) optional, contingent or unscheduled calls of any Notes 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 Notes; 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 Notes and no property secures repayment of the Notes.

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 described in subsection 2 above on or prior to the date set forth in subsection 2 above.

5. 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 Notes. 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 which require this section, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Notes; 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 C, and any provision of this section C 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 C, 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.

6. Note Owner's Remedies Under This Section. The right of any Note owner or beneficial owner of Notes 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 Notes. 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 Notes, including persons holding Notes through nominees or depositories.

D. 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.

E. 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.