



Legislation Text

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A MOTION of the county council accepting a bid for the purchase of the county's Limited Tax General Obligation Bonds, 2012, Series A, in the aggregate principal amount of \$65,935,000, and establishing certain terms of such bonds in accordance with Ordinance 16785.

WHEREAS, pursuant to Ordinance 16785 (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 \$95,000,000 to provide long-term financing for the ABT Project, defined and described in the Ordinance, and further authorized the issuance of one or more series of its limited tax general obligation bond anticipation notes in an outstanding aggregate principal amount not to exceed \$95,000,000 to provide interim financing for the ABT Project pending the issuance of the bonds, and

WHEREAS, the Ordinance provided that such bonds may be sold at public sale, either by negotiated sale or by competitive bid, in one or more series as determined by the director of the finance and business operations division of the department of executive services of the county (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, 2012, Series A, in the aggregate principal amount of \$65,935,000 (the "Bonds"), shall be sold to provide long-term financing for the ABT Project as provided herein, and

WHEREAS, currently, none of the bonds and \$82,295,000 of the bond anticipation notes authorized by the Ordinance are outstanding, all of which will be repaid and retired with proceeds of the Bonds and

unexpended proceeds of such bond anticipation notes on the date of issuance of the Bonds, and the aggregate principal amount of all such bonds and bond anticipation notes (including the Bonds) to be outstanding on the date of issuance of the Bonds will be \$65,935,000, which amount does not exceed \$95,000,000, and

WHEREAS, a preliminary official statement dated March 2, 2012, has been prepared for the public sale of the Bonds, the official notice of such sale dated March 2, 2012 (the "Notice"), has been duly published, and bids have been received in accordance with the Notice, and

WHEREAS, the attached bid of J.P. Morgan Securities LLC to purchase the Bonds is the best bid received for the Bonds, and it is in the best interest of the county that the Bonds be sold to J.P. Morgan Securities LLC on the terms set forth in the Notice, the attached bid, 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. Ratification of Notice, Acceptance of Bids, and Authorization of Bonds. The issuance of the Bonds, designated as the county's "Limited Tax General Obligation Bonds, 2012, Series A," in the aggregate principal amount of \$65,935,000, to provide long-term financing for the ABT Project, 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 Bonds, as set forth in the bid of J.P. Morgan Securities LLC attached hereto as Attachment B, which shall be deemed to be adjusted to reflect the changed aggregate principal amount and the changed principal amounts of the maturities of the Bonds, as and to the extent permitted by the Notice, is hereby accepted. The Bonds shall be dated their date of issue and delivery, and shall be subject to optional redemption as set forth in the Notice. The Bonds shall mature on the dates and in the amounts, and shall bear interest at the rates, all as specified in Attachment C. The Bonds shall be Tax-Exempt Obligations, as defined in the Ordinance. The Bonds shall conform in all other respects to the terms and conditions specified in the Notice and the Ordinance.

C. Long-Term Financing Plan. In accordance with the Ordinance, the proceeds of the Bonds (including original issue premium but net of the underwriter's discount) shall be used to provide long-term financing for the ABT Project in the form of a current refunding and defeasance of the county's outstanding Limited Tax General Obligation Bond Anticipation Notes, 2011, Series B (the "Notes").

There is hereby authorized to be created a special trust account to be maintained in escrow with U.S. Bank National Association (the "Escrow Agent"), which will be known as the "King County Limited Tax General Obligation Bond Anticipation Notes, 2011, Series B, Refunding Account" (the "Refunding Account"). The Refunding Account shall consist of the Escrow Subaccount and the Issuance Costs Subaccount. The Refunding Account is to be drawn upon for the purpose of paying the principal of and interest on the Notes to be refunded by the Bonds and paying costs of issuing the Bonds.

Net proceeds of the Bonds in the amount of \$79,309,548.53 and unexpended proceeds of the Notes in the amount of \$5,430,000.00 shall be deposited in and credited to the Escrow Subaccount of the Refunding Account. To accomplish the current refunding and defeasance of the Notes, the Escrow Agent shall purchase certain noncallable Government Obligations with a portion of such funds in the Escrow Subaccount and shall hold the remainder as the initial cash balance, all as identified in Attachment D. Such noncallable Government Obligations bear such interest and mature as to principal and interest in such amounts and at such time(s) which, together with the initial cash balance, will provide for the payment of the principal of and the interest on the Notes coming due at their maturity on June 13, 2012 (the "Note Payment"). Such Government Obligations and initial cash balance shall be irrevocably deposited into the Escrow Subaccount.

Net proceeds of the Bonds in the amount of \$177,995.35 shall be deposited in and credited to the Issuance Costs Subaccount of the Refunding Account, and applied to pay expenses of the acquisition and safekeeping of the Government Obligations and the costs of the issuing of the Bonds (including the rounding amount).

The Escrow Agent is hereby authorized and directed to pay to the county, or, at the direction of the

Finance Director, to the fiscal agency of the State of Washington, sums sufficient to pay the principal of and the interest on the Notes when due at their maturity on June 13, 2012. Such sums shall be paid from the Government Obligations and initial cash balance deposited into the Escrow Subaccount, and the income therefrom and proceeds thereof. All such sums so paid shall be charged to the Escrow Subaccount of the Refunding Account. Funds deposited in the Refunding Account and its accounts shall be held, invested and applied in accordance with the provisions of this motion and the laws of the State of Washington for the benefit of the county and holders of the Notes.

The proper officials of the county are directed to obtain from the Escrow Agent an agreement setting forth the duties, obligations and responsibilities of the Escrow Agent in connection with the current refunding and defeasance of the Notes as provided herein and stating that such provisions for the payment of the fees, compensation and expenses of such Escrow Agent are satisfactory to it. In order to carry out the purposes of this section, the Finance Director is authorized and directed to execute and deliver to the Escrow Agent such agreement when the provisions thereof have been fixed and determined. The county will take such actions as are found necessary to see that all necessary and proper fees, compensation and expenses of the Escrow Agent in connection with the current refunding and defeasance of the Notes shall be paid when due.

D. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. This section D. constitutes the county's written undertaking (the "Undertaking") for the benefit of the owners and beneficial owners of the Bonds as required by section (b)(5)(i) (C) 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 2012 for the fiscal year ended December 31, 2011):

(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 make specific 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 to the MSRB the county's audited annual financial statements prepared in accordance with BARS when and if available.

3. Specified 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 specified events with respect to the 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 Bonds, or other material events affecting the tax status of the Bonds;

(g) modifications to rights of Bondholders, if material;

(h) Bond calls, if material, and tender offers;

(i) defeasances;

(j) release, substitution or sale of property securing repayment of the Bonds, if material;

(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 the Undertaking, the county advises with reference to items (c), (j) and (n) above that no debt service reserves secure payment of the Bonds, no property secures repayment of the Bonds, and there is no trustee for 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

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 the Undertaking 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 specified events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. The Undertaking, 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 the Undertaking, 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 the Undertaking.

Notwithstanding any other provision of this motion, the county may amend the Undertaking, and any provision of the Undertaking 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 the Undertaking, 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 specified 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 the Undertaking. The right of any Bond owner or beneficial owner of Bonds to enforce the provisions of the Undertaking 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 the Undertaking shall not be an event of default with respect to the Bonds. For purposes of the Undertaking, "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 proper county officials, their agents, and representatives are hereby authorized and directed to do everything necessary for the prompt issuance and delivery of the Bonds, for the preparation, execution and delivery of the final official statement for the sale 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 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 Bonds.