



Legislation Text

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Clerk 03/01/2004

A MOTION of the county council accepting bids for the county's Sewer Revenue Bonds, Series 2004A, in the aggregate principal amount of \$185,000,000 and Sewer Revenue Refunding Bonds, Series 2004B, in the aggregate principal amount of \$61,760,000, and establishing certain terms of such bonds and a plan of refunding; all in accordance with Ordinance 14753.

WHEREAS, the county council by Ordinance 14753 passed on September 18, 2003 (the "Bond Ordinance"), authorized the issuance and sale of not to exceed \$65,000,000 principal amount of sewer revenue bonds of the county to refund certain outstanding sewer revenue bonds (the "Refunding Bonds") and not to exceed \$185,000,000 principal amount of sewer revenue bonds of the county to finance the construction of improvements to the county's sewer system (the "Project Bonds"); and

WHEREAS, the Bond Ordinance provided that such bonds be sold in one or more series and by negotiated sale or competitive bid as determined by the county's manager of finance and business operations (the "Finance Manager") in consultation with the county's financial advisor; and

WHEREAS, the Finance Manager has determined that a series of Refunding Bonds in the aggregate principal amount of \$61,760,000 (as hereinafter identified, the "Series 2004A Bonds") and a series of Project Bonds in the aggregate principal amount of \$185,000,000 (hereinafter identified, the "Series 2004B Bonds") be sold by competitive bid as provided herein; and

WHEREAS, pursuant to the Bond Ordinance, a preliminary official statement dated February 23, 2004, has been prepared for the sale of the Bonds, the Official Notice of Bond Sale (the "Notice") has been published,

and bids have been received in accordance with the Notice; and

WHEREAS, the attached bid of Merrill Lynch & Co. to purchase the Series 2004A Bonds (the “Series 2004A Bonds Purchaser”) is the best bid received for the Series 2004A Bonds and the attached bid of Merrill Lynch & Co. to purchase the Series 2004B Bonds (the “Series 2004B Bonds Purchaser”) is the best bid received for the Series 2004B Bonds, and it is in the best interest of the county that the Series 2004A Bonds be sold to the Series 2004A Bonds Purchaser and that the Series 2004B Bonds be sold to the Series 2004B Bonds Purchaser on the terms set forth in the Notice, the attached bids, the Bond Ordinance, and this motion; and

WHEREAS, in accordance with the Bond Ordinance, the council wishes to ratify and confirm certain terms of the bonds and authorize and approve the final plan of refunding certain outstanding sewer revenue bonds of the county from proceeds of the Refunding Bonds, as set forth herein;

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. Ratification of Notice of Sale, Acceptance of Bid, and Authorization of Bonds. The issuance of a series of the Project Bonds, designated as the King County, Washington, Sewer Revenue Bonds, Series 2004A, in the aggregate principal amount of \$185,000,000 (the “Series 2004A Bonds”), the issuance of the Refunding Bonds, designated as the King County, Washington, Sewer Revenue Refunding Bonds, Series 2004B, in the aggregate principal amount of \$61,760,000 (the “Series 2004B Bonds,” and together with the Series 2004A Bonds, the “Bonds”), and the terms and conditions thereof as set forth in the Official Notice of Bond Sale, attached hereto as Attachment A (the “Notice”), are hereby ratified and confirmed, and the Series 2004A Purchaser’s bid to purchase the Series 2004A Bonds, as set forth on Attachment B (the “Series 2004A Bid”) and the Series 2004B Purchaser’s bid to purchase the Series 2004B Bonds, as set forth on Attachment C (the “Series 2004B Bid” and together with the Series 2004A Bid, the “Bids”), are hereby accepted. The Bonds shall bear interest at the rates set forth in the Bids and shall conform in all other respects to the terms and

conditions specified in the Notice, Bids and Bond Ordinance. The Bonds shall be subject to optional and mandatory redemption as set forth in the Notice and Bids.

C. Application of Project Bond Proceeds. In accordance with Section 13.A of the Bond Ordinance, there is hereby established a special subaccount within the Construction Account to be designated as the Series 2004A Construction Subaccount (the “Construction Subaccount”). Proceeds of the Series 2004A Bonds (exclusive of accrued interest, if any, which shall be deposited into the Debt Service Account in the Bond Fund) shall be deposited in the Construction Subaccount and applied to pay costs of improvements to the System, in accordance with Section 13.A of the Bond Ordinance, and costs of issuance of the Series 2004A Bonds.

D. Refunding and Redemption of Refunded Bonds.

1. Plan of Refunding. In accordance with Sections 14 and 24 of the Bond Ordinance, the Finance Manager has determined, in consultation with the county’s financial advisors, that proceeds of the Series 2004B Bonds shall be used to refund the following obligations of the county payable from sewer revenues pursuant to the plan of refunding set forth below and ratified and confirmed hereby:

Refunded Series 1999 Bonds (Second Series)

Maturity (January 1)	Principal Amount	Interest Rate	Call Date
2010	\$1,395,000	6.000	01/01/2009
2011	1,460,000	6.000	01/01/2009
2012	1,530,000	6.000	01/01/2009
2013	1,630,000	6.000	01/01/2009
2014	4,720,000	6.250	01/01/2009
2015	5,020,000	6.250	01/01/2009
2016	3,965,000	6.250	01/01/2009
2017	1,020,000	6.000	01/01/2009
2020	3,420,000	6.000	01/01/2009
2029	14,620,000	asalpha6.200	01/01/2009
2035	14,995,000	6.200	01/01/2009

The Refunded Series 1999 (Second Series) shall be referred to in this motion as the Refunded Bonds. As provided in Section 14 of the Bond Ordinance, the King County Sewer Revenue Refunding Bonds, Series 2004B Account (the “Refunding Account”) shall be established and maintained with the Escrow Agent (as identified below). Proceeds of the Series 2004B Bonds (exclusive of accrued interest, if any, which shall be deposited into the Debt Service Account in the Bond Fund) shall be deposited in the Refunding Account and used, together with other funds of the county, if necessary, to purchase certain “Government Obligations” (which obligations so purchased are herein called “Acquired Obligations”), bearing such interest and maturing as to principal and interest in such amounts and at such times that, together with any necessary beginning cash balance, will provide for the payment of:

- (a) the interest on the Refunded Bonds due and payable on and prior to January 1, 2009; and
- (b) the redemption price (101% of the principal amount) payable on January 1, 2009, of the Refunded Bonds.

Any beginning cash balance and the Acquired Obligations shall be irrevocably deposited with the Escrow Agent in an amount sufficient to defease the Refunded Bonds in accordance with the ordinance authorizing the Refunded Bonds. Any amounts described above that are not provided for in full by such beginning cash balance and the purchase and deposit with the Escrow Agent of the Acquired Obligations shall be provided for by the irrevocable deposit of the necessary amount out of the proceeds of sale of the Series 2004B Bonds or any other money of the county legally available therefor. The proceeds of the Series 2004B Bonds remaining in the Refunding Account after acquisition of the Acquired Obligations and provision for the necessary beginning cash balance shall be utilized to pay expenses of the acquisition and safekeeping of the Acquired Obligations and the costs of issuing the Series 2004B Bonds. The county may, from time to time, transfer, or cause to be transferred, from the Refunding Account any money not thereafter required for the purposes set forth in subparagraphs (a) and (b) above, subject to verification in writing by an independent

certified public accountant that such transfer will not result in inadequate funds being available to make the required payments therefrom. The county reserves the right to substitute other securities for the Acquired Obligations in the event it may do so pursuant to Section 148 of the Code and applicable regulations thereunder, upon compliance with the conditions set forth in the Escrow Agreement.

The selection of U.S. Bank National Association as Escrow Agent is hereby ratified and confirmed.

2. Redemption of Refunded Bonds. The county hereby irrevocably sets aside sufficient funds through the purchase of the Acquired Obligations and an initial cash deposit to make the payments, as specified in subparagraphs (a) and (b) above.

The county hereby irrevocably defeases and calls for redemption on January 1, 2009, the Refunded Bonds in accordance with the provisions of the ordinance authorizing the redemption and retirement of the Refunded Bonds prior to their fixed maturities.

Said defeasance and call for redemption of the Refunded Bonds shall be irrevocable after the final establishment of the Refunding Account and delivery of the Acquired Obligations and the requisite cash deposit, if any, to the Escrow Agent, except as provided herein relating to the substitution of securities. The Finance Manager is authorized and requested to provide whatever assistance is necessary to accomplish such defeasance and redemption.

The Escrow Agent is hereby authorized and directed to notify the fiscal agency of the State of Washington to give notice of the redemption of the Refunded Bonds in accordance with the applicable provisions of the ordinance authorizing their issuance. The Finance Manager is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notice therefor. The costs of publication of such notice shall be an expense of the county.

The Escrow Agent is hereby authorized and directed to pay to the fiscal agency or agencies of the State of Washington sums sufficient to make, when due, the payments specified in subparagraphs (a) and (b) above. All such sums shall be paid from the money and the Acquired Obligations deposited with the Escrow Agent

pursuant to this section, and the income therefrom and proceeds thereof. All such sums so paid shall be credited to the Refunding Account. All money and Acquired Obligations deposited with the Escrow Agent and any income therefrom shall be held, invested and applied in accordance with the provisions of the Bond Ordinance and with the laws of the State of Washington for the benefit of the county and the owners of the Refunded Bonds.

3. Findings of Saving and Defeasance. This council hereby finds and determines that the issuance and sale of the Series 2004B Bonds at this time will effect a savings to the county and ratepayers of the System. In making such finding and determination, the council has given consideration to the interest on and the fixed maturities of such Refunding Bonds and the Refunded Bonds, the costs of issuance of the Series 2004B Bonds and the known earned income from the investment of the proceeds of sale of the Series 2004B Bonds pending redemption and payment of the Refunded Bonds.

This council hereby further finds and determines 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 Refunded Bonds and will discharge and satisfy the obligations of the county with respect to the Refunded Bonds under the ordinance authorizing their issuance 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 their respective authorizing ordinance and shall cease to be entitled to any lien, benefit or security under such ordinance except the right to receive payment from the Acquired Obligations and beginning cash balance so set aside and pledged.

E. Reserve Requirement. In accordance with Section 9.C of the Bond Ordinance, proceeds of the Bonds shall be used to purchase Qualified Insurance in the form of a Surety Bond (the "Surety Bond") from MBIA Insurance Corporation ("MBIA") in an amount sufficient to satisfy the Reserve Requirement with respect to the Bonds. The county agrees to the conditions for obtaining the Surety Bond, including the payment

of the premium therefor and the other requirements to be set forth in an agreement to be approved and executed by the Finance Manager on behalf of the county. The council further authorizes and directs all proper officers, agents, attorneys and employees of the county to cooperate with the Insurer in preparing such additional agreements, certificates, and other documentation on behalf of the county as shall be necessary or advisable in providing for the Surety Bond.

F. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. In accordance with Section 27 of the Bond Ordinance, this section 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. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to each NRMSIR and to 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 2005 for the fiscal year ended December 31, 2004):

(a) Annual financial statements, which may or may not be audited, prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) and generally of the type included as Appendix C in the official statement for the Bonds;

(b) Amount of outstanding Parity Bonds; and

(c) Information regarding customers, revenues and expenses of the sewer system generally in the form set forth in the Official Statement for the Bonds in the table labeled "Summary of Historical Sewer System Customers, Revenues and Expenses."

Items (b) and (c) 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 nine 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, available from 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 the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) 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 Bonds, 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 Bonds;
- (g) Modifications to rights of Bond holders;
- (h) Optional, contingent or unscheduled calls of any Bonds 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 Bonds; and

(k) Rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the county advises with reference to item (j) above that no property secures payment of 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 each NRMSIR or to the MSRB and to the SID, if any, notice of its failure to provide the annual financial information and operating data 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 Bonds. 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 Bonds; 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, and any provision of this section 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, 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. Bond Owner's Remedies under this Section. The right of any Bond Owner or Beneficial Owner of Bonds 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 Bonds hereunder. 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 Bonds, including persons holding Bonds through nominees or depositories.

G. 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.

H. Severability. If any provision in this motion is 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.