

Legislation Text

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Clerk 03/31/2003

A MOTION of the county accepting a bond purchase contract for the purchase of the county's Unlimited Tax General Obligation Refunding Bonds, 2003, in the aggregate principal amount of \$108,795,000, and establishing certain terms of such Bonds and a plan of refunding, all in accordance with Ordinance 14583 of the County.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

WHEREAS, the county council by Ordinance 14583, passed March 10, 2003 (the "Bond Ordinance"), authorized the issuance and sale of the county's Unlimited Tax General Obligation Refunding Bonds, 2003 (the "Bonds"), in an outstanding aggregate principal amount of not to exceed \$120,000,000, and

WHEREAS, the Bond Ordinance authorized the public sale of the bonds, either by negotiated sale or by competitive bid, as determined by the Finance Manager in consultation with the county's financial advisor, and

WHEREAS, the Finance Manager has determined that the Bonds be sold by negotiated sale as provided herein, and

WHEREAS, pursuant to the Bond Ordinance, the Finance Manager has negotiated the sale of the Bonds to UBS PaineWebber Inc., Lehman Brothers and Siebert Brandford Shank & Co., LLC (the "Underwriters"), and a preliminary official statement dated March 21, 2003, has been prepared for the sale of the Bonds; and

WHEREAS, it is in the best interest of the county that the Bonds be sold to the Underwriters on the terms set forth in the attached bond purchase contract, 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 Bond Ordinance.

B. Approval of Bond Purchase Contract and Authorization of Bonds. The issuance of the Bonds, designated as the county's Unlimited Tax General Obligation Refunding Bonds, 2003, in the aggregate principal amount of \$108,795,000, and the terms and conditions thereof as set forth in the bond purchase contract attached hereto as Exhibit A (the "Purchase Contract") are hereby ratified and confirmed, and the Purchase Contract is hereby approved. The Bonds shall be dated, shall mature or be subject to mandatory redemption, as applicable, on June 1 in each of the years and in the amounts, and shall bear interest at the rates and payable on the dates specified in the Purchase Contract. In all other respects, the Bonds shall conform to the terms and conditions specified in the Purchase Contract and Bond Ordinance.

The Bonds shall be subject to optional redemption as set forth in the Purchase Contract.

C. Refunding of Refunded Bonds.

1. Plan of Refunding. The proper county officials are authorized to carry out the Refunding Plan in accordance with Section 11 of the Bond Ordinance. The amounts and maturities of the Refunded Bonds shall be as specified in the Purchase Contract.

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

3. Finding of Savings and Defeasance. The council finds and determines that a substantial savings will be effected by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded Bonds but for such refunding, and that the Government Obligations to be deposited with the Escrow Trustee and the income therefrom, together with any necessary beginning cash balance, are sufficient to defease and redeem the above-referenced Refunded Bonds and will discharge and satisfy the obligations of the county with respect to such Refunded Bonds under Ordinance 11122 and the pledges of the County therein. Immediately upon delivery of such Government

Obligations to the Escrow Trustee and the deposit of any necessary beginning cash balance, the Refunded Bonds shall be deemed not to be outstanding under Ordinance 11122 and shall cease to be entitled to any lien, benefit or security thereunder except the right to receive payment from the Government Obligations and beginning cash balance so set aside and pledged.

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 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 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 Bonds under the heading "Appendix B: Audited 2001 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) 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 statement.

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 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 owners;

- (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 items (c) and (j) above that no debt service reserves secure payment of the Bonds and no property secures repayment 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 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 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.

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. 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.

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 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.