

CLARK COUNTY, WASHINGTON
RESOLUTION NO. 2013-10- 13

A RESOLUTION of the Board of County Commissioners, Clark County, Washington, relating to contracting indebtedness; accepting the proposal of Banc of America Preferred Funding Corporation to provide a term loan evidenced by a bond payable from the taxes and other available revenues of the County; authorizing the issuance of a limited tax general obligation bond in the principal amount of \$10,000,000 for general governmental purposes to make a payment in settlement of certain civil rights litigation pending against the County; fixing the form, terms and covenants of such bond; creating a special fund for the payment thereof; providing for the delivery of that bond to Banc of America Preferred Funding Corporation; and ratifying and confirming certain prior actions.

WHEREAS, the Board of County Commissioners of Clark County, Washington (the "County"), finds that the County needs funds to make a payment in settlement of certain civil rights litigation pending against the County and does not have sufficient available funds to make that payment; and

WHEREAS, it is in the best interest of the County to obtain a term loan and contract indebtedness by the issuance of a limited tax general obligation bond in the principal amount of \$10,000,000 to carry out the Bond Purpose (defined herein); and

WHEREAS, Banc of America Preferred Funding Corporation has submitted to the County a proposal to provide to the County such a term loan and to purchase such bond (the "Proposal Letter"); NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, WASHINGTON, as follows:

SECTION 1. Definitions. As used in this resolution, the following words shall have the following meanings:

"Bank" means Banc of America Preferred Funding Corporation.

"Board" means the Board of County Commissioners of the County.

“Bond” means the Limited Tax General Obligation Bond, 2013, issued pursuant to and for the purposes provided in this resolution.

“Bond Fund” means the Limited Tax General Obligation Bond Fund, 2013 created by Section 5 of this resolution.

“Bond Purpose” means the making of a payment in settlement of certain civil rights litigation pending against the County.

“Bond Register” means the books or records maintained by the Bond Registrar for the purpose of registration of the Bond.

“Bond Registrar” means the Treasurer.

“Code” means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

“County” means Clark County, Washington, a political subdivision of the State of Washington (the “State”) duly organized and existing under and by virtue of the laws of the State.

“Default Rate” means an interest on the Bond equal to the stated interest rate on the Bond, plus four percentage points (4%).

“Delivery Date” means the date the Bond is delivered to the Bank.

“Events of Default” means (i) nonpayment of principal, interest, fees or other amounts when due under the Bond, this resolution or the Proposal Letter; (ii) failure to perform or observe covenants set forth herein; (iii) any representation or warranty to the Bank in connection with the Bond proving to have been incorrect when made or confirmed; (iv) voluntary or involuntary bankruptcy, insolvency, debt moratorium of the County; (v) inability of the County to pay its debts as they become due; (vi) actual or asserted invalidity or legal impairment of the Bond or this resolution; (vii) downgrade of the County’s limited tax general obligation debt rating below

Baa3/BBB-/BBB- (or the equivalent) by Moody's, S&P or Fitch, respectively, and (viii) failure to maintain the tax-exempt status of the Bond.

"Fitch" means Fitch Ratings.

"Maturity Date" means November 1, 2020.

"Moody's" means Moody's Investors Service.

"Proposal Letter" means the letter of the Bank dated October 10, 2013, as it may be amended and supplemented, describing certain terms of the term loan to be evidenced by the Bond.

"State" means the state of Washington.

"S&P" means Standard & Poor's Ratings Services.

"Treasurer" means the Treasurer of the County or his or her designee.

SECTION 2. Authorization to Incur Indebtedness. The County is authorized by RCW 39.36.020(2) to incur non-voted indebtedness in an amount not to exceed one and one-half of one percent of the value of the taxable property in the County. The County has sufficient nonvoted debt capacity to incur the indebtedness to be evidenced by the Bond.

SECTION 3. Authorization and Description of the Bond. For the Bond Purpose, the County may borrow money pursuant to the Proposal Letter and this resolution and, as evidence thereof, shall issue its Bond in the principal amount of \$10,000,000.

The Bond shall be designated the Limited Tax General Obligation Bond, 2013; shall be dated the Delivery Date; shall be in fully registered form; shall be numbered R-1; and shall mature on the Maturity Date. The Bond shall bear interest at the fixed rate of 1.85% per annum, calculated from its date of delivery to the Bank, and shall be computed on the principal amount outstanding on the basis of a 30-day month and a 360-day year. Principal of and interest on the Bond shall be payable in approximately equal semiannual amortized installments on each May 1

and November 1, commencing May 1, 2014, to and including the Maturity Date, as set forth in Schedule 1 attached to the Bond.

The Board finds that the determination of the interest rate on the Bond in the manner described herein is in the best interest of the County.

SECTION 4. Bond Registrar; Registration and Transfer of Bond. The Bond shall be issued to the Bank only in registered form as to both principal and interest and recorded on the Bond Register. The Bond Register shall contain the name and mailing address of the registered owner of the Bond.

The Treasurer shall serve as Bond Registrar for the Bond. The Bond Registrar is authorized, on behalf of the County, to authenticate and deliver the Bond if transferred or exchanged in accordance with the provisions of the Bond and this resolution and to carry out all of the Bond Registrar's powers and duties under this resolution.

The Bond may be assigned or transferred by the Bank, only in whole and with the prior written consent of the County, which consent may not unreasonably be withheld. The County may not withhold consent if the transfer is due to a change in form or structure of the Bank or a merger or acquisition, as long as the transferee has the same or better credit rating as the Bank's rating in effect at the time of such change in form or structure of the Bank or merger or acquisition.

When the Bond has been paid in full, both principal and interest, the Bond shall be surrendered by the Bank to the Bond Registrar, who shall cancel the Bond.

SECTION 5. Bond Fund; Pledge of Taxes; Borrowing Funds; Investment of Money. The Bond Fund is created as a special fund in the Office of the Treasurer for payment of the Bond.

The Bond shall be paid solely from the Bond Fund. The County irrevocably pledges to include in its budget and to levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of the electors of the County, on all of the taxable property in the County in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the outstanding principal of and interest on the Bond, and the full faith, credit and resources of the County are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest. The County irrevocably pledges to set aside and deposit in the Bond Fund from such taxes and from other money legally available therefor on or before the dates required herein, amounts sufficient to pay principal of and interest on the Bond when due and to pay the Bond in full on the Maturity Date.

SECTION 6. Payment of the Bond. Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Principal of and interest on the Bond shall be paid by electronic funds transfer, or by checks or drafts of the Bond Registrar mailed on the payment date to the registered owner at the address appearing on the Bond Register on the second Business Day preceding the payment date.

SECTION 7. Prepayment of Bond. Any prepayment of the Bond prior to the Maturity Date will result in a prepayment fee. The prepayment fee will be determined by calculating the funding costs incurred by the Bank, based on the cost of funds at the time the interest rate was fixed, and subtracting the interest income that can be earned by the Bank by reinvesting the prepaid funds at the Reinvestment Rate. The calculation is defined more fully below:

(a) The “Fixed Interest Rate Period” is the period during which the interest rate in effect at the time of the prepayment does not change. If the Fixed Interest Rate Period does not extend for the entire remaining life of the credit, then the following rules will apply:

(i) For any portion of the prepaid principal for which the scheduled payment date is after the end of the Fixed Interest Rate Period, the prepayment fee for that portion shall be calculated based only on the period through the end of the Fixed Interest Rate Period, as described below.

(ii) If a prepayment is made on a date on which the interest rate resets, then there will be no prepayment fee.

(b) The prepayment fee calculation is made separately for each Prepaid Installment. A "Prepaid Installment" is the amount of the prepaid principal that would have been due on a particular scheduled payment date (the "Scheduled Payment Date"). However, as explained in the preceding paragraph, all amounts of the credit that would have been paid after the end of the Fixed Interest Rate Period shall be considered a single Prepaid Installment with a Scheduled Payment Date (for the purposes of this calculation) equal to the last day of the Fixed Interest Rate Period.

(c) The prepayment fee for a particular Prepaid Installment will be calculated as follows:

(i) Calculate the monthly interest payments that would have accrued on the Prepaid Installment through the applicable Scheduled Payment Date, if the prepayment had not been made. The interest payments will be calculated using the Original Cost of Funds Rate.

(ii) Next, calculate the monthly interest income that could be earned on the Prepaid Installment if it were reinvested by the Bank at the Reinvestment Rate through the Scheduled Payment Date.

(iii) Calculate the monthly differences of the amounts calculated in (i) minus the amounts calculated in (ii).

(iv) If the remaining term of the Fixed Interest Rate Period is greater than one year, calculate the present value of the amounts calculated in (iii), using the Reinvestment Rate. The result of the present value calculation is the prepayment fee for the Prepaid Installment.

(d) Finally, the prepayment fees for all of the Prepaid Installments are added together.

The sum, if greater than zero, is the total prepayment fee due to the Bank.

(e) The following definitions will apply to the calculation of the prepayment fee:

(i) "Original Cost of Funds Rate" means the fixed interest rate per annum, determined solely by the Bank, at which the Bank would be able to borrow funds in the Bank Funding Markets for the duration of the Fixed Interest Rate Period in the amount of the prepaid principal and with a term, interest payment frequency, and principal repayment schedule matching the prepaid principal.

(ii) "Bank Funding Markets" means one or more wholesale funding markets available to the Bank, including the LIBOR, Eurodollar, and swap markets as applicable and available, or such other appropriate money market as determined by the Bank in its sole discretion.

(iii) "Reinvestment Rate" means the fixed rate per annum, determined solely by the Bank, as the rate at which the Bank would be able to reinvest funds in the amount of the Prepaid Installment in the Bank Funding Markets on the date of prepayment for a period of time approximating the period starting on the date of prepayment and ending on the Scheduled Payment Date.

(f) The Original Cost of Funds Rate and the Reinvestment Rate are the Bank's estimates only and the Bank is under no obligation to actually purchase or match funds for any transaction or reinvest any prepayment. The Bank may adjust the Original Cost of Funds Rate

and the Reinvestment Rate to reflect the compounding, accrual basis, or other costs of the prepaid amount. The rates shall include adjustments for reserve requirements, federal deposit insurance and any other similar adjustment that the Bank deems appropriate. These rates are not fixed by or related in any way to any rate the Bank quotes or pays for deposits accepted through its branch system.

SECTION 8. Events of Default. Upon the occurrence and continuation of an Event of Default, the Bond shall bear interest at the Default Rate, and the Bank may pursue any remedies to which it is entitled under the Bond and this resolution or at law or in equity, including enforcement of payment in mandamus against the County.

SECTION 9. Form and Execution of Bond. The Bond shall be prepared in a form consistent with the provisions of this resolution and State law and shall be signed by the Chairman of the Board and the Clerk of the Board, either or both of whose signatures may be manual or in facsimile, and the seal of the County or a facsimile thereof shall be printed or impressed thereon.

Only if the Bond bears a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar, shall it be valid or obligatory for any purpose or entitled to the benefits of this resolution:

CERTIFICATE OF AUTHENTICATION

This Bond is the fully registered Clark County, Washington, Limited Tax General Obligation Bond, 2013, described in the Bond Resolution.

Dated: _____

By _____
Clark County Treasurer
Bond Registrar

If any officer whose signature appears on the Bond ceases to be an officer of the County authorized to sign bonds before the Bond bearing his or her signature is authenticated or

delivered by the Bond Registrar or issued by the County, the Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the County as though that person had continued to be an officer of the County authorized to sign bonds. The Bond also may be signed on behalf of the County by any person who, on the actual date of signing of the Bond, is an officer of the County authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bond.

SECTION 10. Preservation of Tax Exemption for Interest on Bond. The County covenants that it will take all actions necessary to prevent interest on the Bond from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bond or other funds of the County treated as proceeds of the Bond at any time during the term of the Bond that will cause interest on the Bond to be included in gross income for federal income tax purposes. The County also covenants that it will, to the extent the arbitrage rebate requirement of Section 148(f) of the Code is applicable to the Bond, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bond, including the calculation and payment of any penalties that the County has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Bond from being included in gross income for federal income tax purposes.

SECTION 11. Reporting Requirements. For so long as the Bond is outstanding, the County covenants with the Bank to provide the following information to the Bank, which may be provided by the County's posting such information to the County's web page and informing and directing the Bank to access such information on line:

(a) within 30 days after receipt by the County of the Washington State Auditor's opinion letter, a copy of the complete audited annual financial statements of the County;

(b) within 210 days after the end of the County's fiscal year, a copy of the complete unaudited annual financial statements of the County prepared by the County;

(c) within 45 days after the beginning of each fiscal year of the County, the Board-authorized budget for that fiscal year; and

(d) such other information respecting the affairs, condition and/or operations, financial or otherwise, of the County as the Bank may from time to time reasonably request.

SECTION 12. Acceptance of Proposal Letter. The Bank has submitted a proposal to accept delivery of the Bond under the terms and conditions of its Proposal Letter. The Board finds that accepting the commitment on the same terms and conditions evidenced by the Proposal Letter is in the County's best interest and therefore authorizes the Treasurer to accept such a commitment.

The Bond will be prepared at County expense and will be delivered to the Bank in accordance with the Proposal Letter, with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel of Seattle, Washington, regarding the Bond. The proper County officials are authorized and directed to do everything necessary for the prompt delivery of the Bond to the Bank and for the proper application and use of the proceeds thereon.

The County will pay all reasonable costs and expenses associated with the preparation, due diligence, administration and closing of all documentation executed in connection with the Bond, including an up-front fee payable to the Bank in the amount of \$5,000, and the Bank's attorney's fees, which are subject to a cap of \$5,000, plus any disbursements incurred by Bank's attorney, both to be paid upon delivery of the Bond to the Bank.

To the extent permitted by law, the County will indemnify and hold harmless the Bank and its respective affiliates and its partners, directors, officers, employees, agents and advisors from and against all losses, claims, damages, liabilities and expenses arising out of or relating to the Bond or this resolution, or the County's use of Bond proceeds including, but not limited to,

reasonable attorneys' fees (including the allocated cost of internal counsel) and settlement costs. This indemnification shall survive and continue for the benefit of all such persons or entities.

SECTION 13. Additional Costs. The County will pay to the Bank, on demand, the Bank's costs or losses arising from any Change in Law which are allocated to the upfront fee referred to in Section 12 of this resolution. The allocation will be made as determined by the Bank, using any reasonable method. The costs include, without limitation, the following:

- (a) any reserve or deposit requirements (excluding any reserve requirement already reflected in the calculation of the interest rate in the Bond); and
- (b) any capital requirements relating to the Bank's assets and commitments for credit.

“Change in Law” means the occurrence, after the date of the Bond, of the adoption or taking effect of any new or changed law, rule, regulation or treaty, or the issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives issued in connection with that Act, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

SECTION 14. Governing Law; Jury Trial; Venue. The Proposal Letter, the Bond and this resolution will be governed by the laws of the State. The County agrees, to the extent permitted under applicable law, to waive any right to a trial by jury in any action or proceeding with respect to any dispute or controversy under the Proposal Letter, the Bond and this resolution. Any litigation involving the Bank shall be brought in the appropriate court of the State having jurisdiction over the matter

SECTION 15. Performance of Certain Duties. Any action required or authorized by this resolution to be taken by the Treasurer may be taken by the Deputy Treasurer of the County or other County officials designated by the Treasurer or Deputy Treasurer.

SECTION 16. Interest Rate Lock. The final interest rate on the Bond has been locked by mutual consent of the Deputy Treasurer on behalf of the County and the Bank, based on market rates for tax-exempt municipal loans and par call options prevailing at the time of the interest rate lock. The action taken by the Deputy Treasurer to lock the interest rate on the Bond is hereby ratified and confirmed by the Board.

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SECTION 17. Effective Date; Ratification. This resolution shall be in full force and effect from and after its adoption and approval. All actions heretofore taken by the Treasurer and other County officials on behalf of the County consistent with the provisions of this resolution are ratified, confirmed and approved.

ADOPTED by the Board of County Commissioners of Clark County, Washington, at a regular open public meeting thereof, this 22nd day of October, 2013.

BOARD OF COUNTY COMMISSIONERS,
CLARK COUNTY, WASHINGTON

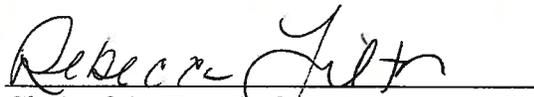


Chairman

Commissioner

Commissioner

Attest:



Clerk of the Board of
County Commissioners

Approved as to Form:

By: 

William G. Tonkin, Foster Pepper PLLC
Bond Counsel to the County

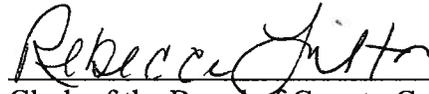
CERTIFICATION

I, the undersigned, Clerk of the Board of County Commissioners of Clark County, Washington (the "County"), hereby certify as follows:

1. The attached copy of Resolution No. 2013-10-13 (the "Resolution") is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Board of County Commissioners (the "Board") of the County held at the regular meeting place thereof on October 22, 2013, as that resolution appears on the minute book of the County; and the Resolution is now in full force and effect; and

2. A quorum of the members of the Board was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of October, 2013.



Clerk of the Board of County Commissioners

SIGNATURE IDENTIFICATION AND INCUMBENCY CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I, REBECCA TILTON, certify that I am the Clerk of the Board of County Commissioners of Clark County, Washington (the "County"), and have been at all times since January, 2011 and that STEVE STUART is the Chair of the Board of County Commissioners of the County and has been at all times since January, 2013.

I further certify that the \$10,000,000 principal amount Limited Tax General Obligation Bond, 2013, of the County dated October 24, 2013, bear my signature as Clerk of the Board of County Commissioners of the County and the signature of STEVE STUART as President of the Board of County Commissioners of the County.

CLARK COUNTY, WASHINGTON

Rebecca Tilton
Rebecca Tilton, Clerk

SUBSCRIBED AND SWORN TO before me this 22 day of October, 2013.

Tina Redline
(Signature of Notary)
Tina RedLine
(Legibly Print or Stamp Name of Notary)

TINA REDLINE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
APRIL 5, 2016

Notary public in and for the State of Washington,
residing at Vancouver, WA
My appointment expires April 5, 2016