

Resolution No.: 17-1161
Introduced: July 8, 2014
Adopted: July 15, 2014

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Authority:

- (1) to issue refunding bonds in order to refund all or part of the outstanding maturities of certain special obligation bonds issued by Montgomery County, Maryland (the "County");
- (2) to provide for the sale of the refunding bonds; and
- (3) generally to provide for and determine various matters in connection with the refunding bonds.

Background

1. Pursuant to Chapters 14 and 20A of the Montgomery County Code, as amended (the "Acts"), Resolution No. 13-1135 adopted by the County Council of the County (the "County Council") on January 13, 1998 and approved by the County Executive of the County (the "County Executive"), as amended by Resolution No. 14-957 ("Resolution No. 14-957") adopted by the County Council on July 17, 2001, Resolution No. 13-1398 adopted by the County Council on August 4, 1998, as amended by Resolution No. 14-947 and certain orders of the County Executive, the County issued its \$11,600,000 Montgomery County, Maryland Special Obligation Bonds (West Germantown Development District), Series 2002A (the "Series 2002A Bonds") and its \$4,315,000 Montgomery County, Maryland Special Obligation Bonds (West Germantown Development District), Junior Series 2002B (the "Series 2002B Bonds") to finance costs of the development, construction of infrastructure improvements located in the West Germantown Development District, which such Series 2002A Bonds and Series 2002B Bonds were issued pursuant to an Indenture of Trust dated as of April 1, 2002 between the County and U.S. Bank National Association, successor trustee to Wachovia Bank National Association (the "Original West Germantown Bond Indenture").
2. Pursuant to Section 2.12 of the Original West Germantown Bond Indenture and the First Supplemental Indenture dated as of July 1, 2004 (the "First Supplement" and together with the Original West Germantown Bond Indenture, the "West Bond Germantown Indenture"), the County exchanged all of its outstanding Series 2002B Bonds in connection with the issuance of its \$4,295,000 Special Obligation Bonds (West Germantown Development District), Senior Series 2004A and Senior Series 2004 B (the "Series 2004 Bonds" together with Series 2002A Bonds, the "West Germantown Bonds").

3. Pursuant the Acts and Resolutions No. 13-1377 adopted by the County Council on July 28, 1998 and 13-1476 adopted by the County Council of the County on October 27, 1998, the County issued its Montgomery County, Maryland Special Obligation Bonds (Kingsview Village Center Development District), Series 1999 (the "Kingsview Bonds") to finance costs of certain infrastructure improvements located in the Kingsview Village Center Development District, which such Kingsview Bonds were issued pursuant to a Indenture of Trust dated as of December 1, 1999 between the County and U.S. Bank, National Association, successor trustee to Wachovia Bank National Association (the "Kingsview Bond Indenture").
4. Section 19-207 of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume) (the "State Refunding Act") provides that a governmental entity authorized to issue bonds may issue new bonds to refund its outstanding bonds upon prior approval of its governing body. Refunding bonds issued under the authority of the State Refunding Act may be issued for public purposes which include realizing savings in the aggregate cost of debt service on either a direct comparison or present value basis.
5. By the terms of the State Refunding Act, the power to issue refunding bonds under the State Refunding Act is in addition to the County's existing borrowing power.
6. Refunding bonds may be sold on a negotiated basis without solicitation of competitive bids if the County determines in a public meeting that the procedure is in the public interest.
7. Refunding bonds may be issued in one or more series, each series being in whatever principal amount the County determines to be required to achieve the purpose for the issuance of the refunding bonds, which amount may be in excess of the principal amount of the bonds refunded.
8. The Director of Finance of the County (the "Director of Finance") has recommended that the County refund, on the earliest date practicable for redemption, all or a portion of the Kingsview Bonds and the West Germantown Bonds described in this Resolution under the authority of the State Refunding Act in order to realize savings to the County in the aggregate cost of debt service on a present value basis.
9. The Director of Finance has recommended that, in light of current market conditions, the County Executive of the County have the authority to determine whether the refunding bonds should be sold on a competitive basis following the solicitation of bids or on a private (negotiated) basis in order to achieve optimum savings to the County in the aggregate cost of debt service.

Action

The County Council for Montgomery County, Maryland, hereby adopts the following resolution:

Section 1. Any defined terms used herein have the meanings given them as set forth in the Background section of this Resolution.

Section 2. The County is hereby authorized to issue, sell and deliver special obligation bonds of the County, at one time or from time to time, and in one or more series, under the authority of the State Refunding Act for the purpose of refunding all or a portion of the Kingsview Bonds and the West Germantown Bonds (together, the "Refunding Bonds"). Refunding Bonds issued in accordance with this Section 2 may be issued in such amount as shall be sufficient (a) to pay either (i) the principal of, and redemption premium, if any, and interest on the bonds to be refunded on the date set for the redemption of the bonds to be refunded, or (ii) purchase price of direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, the principal of and interest on which will be sufficient without reinvestment to pay in a timely manner all or any part of the principal of and redemption premium, if any, and interest on the bonds to be refunded and, if so provided by order of the County Executive, a portion of the interest on such Refunding Bonds, and (b) to pay any and all other costs permitted to be paid from the proceeds of such Refunding Bonds under the State Refunding Act, including (without limitation) the costs of issuance of such Refunding Bonds and underwriting fees, if applicable.

Section 3. Any Refunding Bonds will constitute special obligations of the County, the principal of, premium, if any, and interest on which are payable solely from the special taxes and assessments and certain other assets and revenues of the Kingsview Village Center Development District and the West Germantown Development District pledged by the County under the Kingsview Bond Indenture and the West Germantown Bond Indenture, respectively. The Refunding Bonds shall not constitute a general obligation of the county or a pledge of its full faith and credit and unlimited taxing power nor an indebtedness of the County within the meaning of the Montgomery County Charter.

Section 4. Refunding Bonds may be sold for a price at, above or below par, plus accrued interest to the date of delivery. Authority is hereby conferred on the County Executive to sell the Refunding Bonds through a public sale or through a private (negotiated) sale without solicitation of competitive bids, as the County Executive by executive order, upon consultation with the Director of Finance and the County's financial advisor, shall determine to be in the best interests of the County. Any sale of Refunding Bonds by private negotiation is hereby determined to be for the County's best interest.

Section 5. Refunding Bonds will be designated, dated, bear interest, be in such denominations, be payable at such times and at such places, mature in such amounts and on such dates, be subject to redemption prior to maturity, have such other provisions, be in such forms and be executed and sealed as the County Executive, in his sole and absolute discretion, determines, by executive order or otherwise. The execution and delivery of Refunding Bonds shall be conclusive evidence of the approval of the form of such Refunding Bonds on behalf of the County.

Section 6. The County Executive may, by executive order or otherwise, provide for the deposit of any proceeds from the Refunding Bonds in trust with a trust company or other banking institution and the investment of such proceeds in such manner as will provide for the payment when due of the principal of and premium (if any) and interest on the bonds refunded with such Refunding Bonds, all in accordance with the provisions of the State Refunding Act.

Section 7. The County Executive may, by executive order or otherwise, specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents or procedures, including (without limitation) notices of sale, forms of proposal, bond purchase agreements, escrow deposit agreements and continuing disclosure agreements, as are necessary, proper or expedient to consummate the authorization, sale, security, issuance, delivery or payment of or for the Refunding Bonds and to comply with the provisions of the Kingsview Bond Indenture and the West Germantown Bond Indenture.

Section 8. The County Executive may by executive order designate either or both the Chief Administrative Officer and the Director of Finance as the officer of the County responsible for the execution and delivery on the date of issuance of the Refunding Bonds of a certificate of the County (the "Section 148 Certificate") which complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended ("Section 148"), and the applicable regulations thereunder (the "Arbitrage Regulations"), and such official is hereby directed to execute the Section 148 Certificate and to deliver the same to bond counsel on the date of the issuance of the Refunding Bonds.

The County shall set forth in the Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Refunding Bonds, or of any moneys, securities or other obligations to the credit of any account of the County which may be deemed to be proceeds of the Refunding Bonds pursuant to Section 148 or the Arbitrage Regulations (collectively, "Bond Proceeds"). The County covenants that the facts, estimates and circumstances set forth in the Section 148 Certificate will be based on the County's reasonable expectations on the date of issuance of the Refunding Bonds and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

The County covenants and agrees with each of the holders of any of the Refunding Bonds that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds which would cause the Refunding Bonds to be "arbitrage bonds" within the meaning of Section 148 and the Arbitrage Regulations. The County further covenants that it will comply with Section 148 and the regulations thereunder which are applicable to the Refunding Bonds on the date of issuance of the Refunding Bonds and which may subsequently lawfully be made applicable to the Refunding Bonds.

All officers, employees and agents of the County are hereby authorized and directed to take such actions, and to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Refunding, as may be necessary or appropriate from time to time to comply with, or to evidence the County's compliance with, the covenants set forth in this Section.

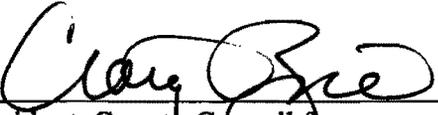
The County Executive, on behalf of the County, may make such covenants or agreements in connection with the issuance of the Refunding Bonds that interest thereon shall be and remain excludable from gross income for federal income tax purposes, and such covenants or agreements shall be binding on the County so long as the observance by the County of any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on the Refunding Bonds from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the County regarding compliance with the provisions of the Internal Revenue Code of 1986, as amended, as the County Executive shall deem advisable in order to assure the registered owners of the Refunding Bonds that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of the proceeds of the Refunding Bonds, the payment of rebate (or payments in lieu of rebate) to the United States, limitations on the times within which, and the purpose for which, such proceeds may be expended, or the use of specified procedures for accounting for and segregating such proceeds.

The County hereby covenants that it will prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or any successor or additional form required by the Internal Revenue Service.

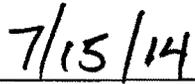
Section 9. In accordance with the provisions of Section 211 of the Charter of the County, the County Executive is hereby authorized to delegate to the Chief Administrative Officer the power and authority to take any and all actions required or permitted to be taken by the County Executive pursuant to this Ordinance.

Section 10. The members of the County Council, the County Executive, the Chief Administrative Officer of the County, the County Attorney, the Director of Finance of the County and the Clerk of the Council, for and on behalf of the County, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such action as may be necessary, proper or expedient to carry out the authority conferred by this Resolution, the West Germantown Bond Indenture and the Kingsview Bond Indenture, including (without limitation) the execution of certificates of the County, elections, statements, opinions, letters and reports pursuant to application provisions of the Code and the Treasury Regulations prescribed thereunder, subject to the limitations set forth in the State Refunding Act, this Resolution, the Kingsview Bond Indenture and the West Germantown Bond Indenture.

Section 11. This Resolution shall take effect upon approval of the President for the County Council.

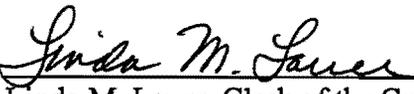


President, County Council for
Montgomery County, Maryland



Date

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council