Resolution No.: 18-127
Introduced: May 12, 2015
Adopted: May 12, 2015

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

SUBJECT: Economic Development Revenue Bonds for St. Andrew's Episcopal School, Inc.

Background

This resolution will authorize Montgomery County, Maryland, pursuant to and in accordance with the Maryland Economic Development Revenue Bond Act, to issue and sell, at one time or from time to time, as limited obligations and not upon the faith and credit of the County, its economic development revenue bonds in the aggregate principal amount not to exceed $23,000,000 and to loan the proceeds from the sale of such bonds to St. Andrew's Episcopal School, Inc., a Maryland non-profit corporation (the "Borrower"), to be used for the purpose of financing, refinancing and reimbursing the costs of the acquisition and improvement of certain facilities, within the meaning of such Act, in Montgomery County, Maryland, consisting primarily of (i) financing, refinancing or reimbursing the costs of the construction, furnishing and equipping of a new student center consisting of approximately 43,000 square feet on the Borrower's main campus located at 8804 Postoak Road and 10033 River Road, Potomac, Maryland, (ii) refunding the outstanding Maryland Health and Higher Education Facilities Authority ("MHHEFA") Revenue Bond, St. Andrew's Episcopal School Issue (2010), which financed the acquisition, construction, renovation and equipping of the Borrower's educational facilities (including the refinancing of advances to the Borrower under the MHHEFA Pooled Loan Program, Revenue Bonds, Series D, the proceeds of which were used primarily to finance the construction of the Borrower's academic building and to renovate certain of the Borrower's existing facilities at 8804 Postoak Road, Potomac, Maryland), (iii) refinancing certain outstanding taxable debt relating to the Borrower's property used and occupied by the Borrower's headmaster for school purposes located at 8407 Harker Drive, Potomac, Maryland, (iv) financing the acquisition of a single-family house adjacent to the Borrower's campus located at 8403 Harker Drive, Potomac, Maryland, (v) funding the costs of issuance, and (vi) financing or refinancing other interests in land, buildings, landscaping, structures, machinery, equipment, furnishings or other real or personal property serving the same purposes at such locations; will authorize the County Executive to specify, prescribe, determine, provide for, approve, execute and deliver any and all matters, details, forms, documents or procedures necessary or appropriate to effectuate the authorization, sale, security, issuance, delivery and payment of and for such bonds and the lending of the proceeds thereof; reserving certain rights in the County; and will generally provide for and determine various matters in connection with such bonds and the lending of the proceeds of the sale thereof.

1. The Maryland Economic Development Revenue Bond Act, Sections 12-101 through 12-118, inclusive, of the Economic Development Article of the Annotated Code of Maryland, as amended (the "Act"), empowers any public body (as defined in the Act) to issue and sell bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, and to loan the proceeds of the sale of such bonds to one or more facility users (as defined in the Act), to finance or refinance any costs of the acquisition (as defined in the Act) or the improvement (as defined in the Act) of a facility (as defined in the Act) for use by one or more facility users.

2. The Act states the declared legislative purpose of the General Assembly of Maryland to be to (i) relieve conditions of unemployment in the State of Maryland (the "State"); (ii) encourage the increase of industry and commerce and a balanced economy in the State; (iii) assist in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State through, among other things, the development of ports, the control or abatement of environmental pollution and the use and disposal of waste; (iv) promote economic development; (v) protect natural resources and encourage resource recovery; and (vi) promote the health, welfare and safety of the residents of the State.

3. Montgomery County, Maryland (the "County"), has received a letter from St. Andrew's Episcopal School, Inc., a Maryland non-profit corporation and a facility applicant as defined in the Act (the "Facility Applicant"), dated March , 2015, a copy of which is attached hereto as Exhibit A and made a part hereof (the "Letter of Intent"), requesting the County to issue and sell its bonds pursuant to the Act and to loan the proceeds of the sale thereof to the Facility Applicant for the purpose of financing and refinancing the costs of the acquisition and improvement of certain facilities within Montgomery County, as hereinafter described. The Facility Applicant is a facility user as defined in the Act. The Facility Applicant acknowledges in the Letter of Intent that the County reserves certain rights concerning the issuance of the bonds as provided in Section 5 of this Resolution.

4. A public hearing concerning the issuance of such bonds and the location and nature of such facilities has been held following reasonable public notice (within the meaning of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code")).

5. The facilities which the Facility Applicant has requested to be so financed and refinanced shall consist generally of: (i) financing, refinancing or reimbursing the costs of the construction, furnishing and equipping of a new student center consisting of approximately 43,000 square feet on the Borrower's main campus located at 8804 Postoak Road and 10033 River Road, Potomac, Maryland; (ii) refunding the outstanding Maryland Health and Higher Education Facilities Authority ("MHHEFA") Revenue Bond, St. Andrew's Episcopal School Issue (2010), which financed the acquisition, construction, renovation and equipping of the Borrower's educational facilities (including the refinancing of advances to the Borrower under the MHHEFA Pooled Loan Program, Revenue Bonds, Series D, the proceeds of which were used primarily to finance the construction of the Borrower's academic building and to renovate certain of the Borrower's existing facilities at 8804 Postoak Road, Potomac, Maryland); (iii) refinancing certain outstanding taxable

debt relating to the Borrower's property used and occupied by the Borrower's headmaster for school purposes located at 8407 Harker Drive, Potomac, Maryland; (iv) financing the acquisition of a single-family house adjacent to the Borrower's campus located at 8403 Harker Drive, Potomac, Maryland; (v) funding the costs of issuance, and (vi) financing or refinancing other interests in land, buildings, landscaping, structures, machinery, equipment, furnishings or other real or personal property serving the same purposes at such locations (collectively, the "Facilities").

6. The County, based on the findings and determinations and subject to the reservation of certain rights as hereinafter set forth, has determined to issue and sell, in addition to any bonds authorized to be issued by any other act of the County, its bonds (within the meaning of the Act), at one time or from time to time, in the aggregate principal amount not to exceed Twenty Three Million Dollars ($23,000,000), or such lesser amount as may be specified by the County Executive of the County (the "County Executive"), hereinafter designated "Montgomery County, Maryland Economic Development Revenue Bonds (St. Andrew's Episcopal School, Inc. Project)" (the "Bonds"), and to loan the proceeds of the Bonds (the "Loan") to the Facility Applicant on the terms and conditions as hereinafter provided in order to finance, in whole or in part, the costs of the financing and refinancing by the Facility Applicant of the Facilities, to encourage economic development and to protect the health, welfare and safety of the citizens of the State and of the County.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

Section 1. Acting pursuant to the Act, it is hereby found and determined as follows:

(a) As evidenced by the Letter of Intent, a "letter of intent" within the meaning of the Act, the issuance of the Bonds pursuant to the Act by the County, a "public body" and a "county" within the meaning of the Act, in order to loan the proceeds to the Facility Applicant, a "facility applicant" and a "facility user" within the meaning of the Act, for the sole and exclusive purpose of financing and refinancing the "acquisition" and "improvement," within the meaning of the Act, of the Facilities, "facilities" within the meaning of the Act, for use by the Facility Applicant, will facilitate and expedite the acquisition and improvement of the Facilities by the Facility Applicant.

(b) The accomplishment of the transactions contemplated and authorized by this Resolution, including (without limitation) the acquisition and improvement of the Facilities by the Facility Applicant and the financing and refinancing thereof, will promote the declared legislative purposes of the Act by (i) creating and sustaining jobs and employment, thereby relieving conditions of unemployment in the State and in the County; (ii) encouraging the increase of industry and commerce and a balanced economy in the State and in the County; (iii) assisting in the retention of

existing industry and commerce in the State and in the County; (iv) promoting economic development; and (v) generally promoting the health, welfare and safety of the residents of the County and of the State.

(c) Neither the Bonds, nor the interest thereon, shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of the County. The Bonds and the interest thereon shall be limited obligations of the County, payable by the County solely from the revenues derived from Loan repayments (both principal and interest) made to the County by the Facility Applicant on account of the Loan or from any other moneys made available to the County for such purposes. No such moneys will be commingled with the County's funds or will be subject to the absolute control of the County, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the County to ensure that the proceeds of the Bonds are used to accomplish the public purposes of the Act and this Resolution. The transactions authorized hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use. The public purposes expressed in the Act are to be achieved by facilitating and expediting the acquisition of the Facilities by the Facility Applicant.

(d) The County Executive of the County is the chief executive officer of the County within the meaning of the Act and shall undertake on behalf of the County certain responsibilities described in the Act and hereinafter specified.

(e) The Bonds may be sold at either private (negotiated) sale or at public sale, and at, above or below par, in any event in such manner and upon such terms as the County Executive, in his sole and absolute discretion, deems to be in the best interests of the County.

(f) All or a portion of the Bonds may be issued as "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code.

Section 2. This Resolution is intended to be, and shall constitute, evidence of the present intent of the County to issue and deliver the Bonds authorized hereby in accordance with the terms and provisions hereof, for the purpose of materially inducing the Facility Applicant to acquire and improve the Facilities. Notwithstanding the foregoing, nothing in this Resolution shall be deemed to constitute (i) an undertaking by the County to expend any of its funds (other than the proceeds from the sale of the Bonds, revenues derived from Loan repayments made to the County on account of the Loan and any other moneys made available to the County for such purpose) to effect the transactions described herein or (ii) an assurance by the County as to the availability of one or more ready, willing and able purchasers for the Bonds to whom the Bonds may lawfully be sold under, among others, applicable federal and state securities and legal investment laws.

The County and the Facility Applicant contemplate that the Facility Applicant may proceed with the acquisition and improvement of the Facilities prior to the issuance, sale and delivery of the Bonds; provided, however, that if the Facility Applicant proceeds with such acquisition and improvement prior to the determination of the County Executive as provided in Section 5 of this Resolution, it does so at its own risk.

Section 3. As described in the Letter of Intent, the County will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds, the making of the Loan or the acquisition and improvement of the Facilities, and the Facilities will be acquired and improved so as to conform to the requirements of the Facility Applicant; accordingly, the Facility Applicant shall (i) negotiate and approve all financing arrangements in connection with the acquisition and improvement of the Facilities and (ii) pay all costs incurred by or on behalf of the County in connection with the issuance and sale of the Bonds, the making of the Loan, including the administration thereof, and the acquisition and improvement of the Facilities, including (without limitation) all costs incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed financing, refinancing, acquisition and improvement, including (without limitation) the fees of bond counsel and compensation to any other person (other than full-time employees of the County) performing services by or on behalf of the County in connection with the transactions contemplated by this Resolution, whether or not the proposed financing, refinancing, acquisition and improvement are consummated.

Section 4. In addition to any bonds authorized to be issued by any other act of the County, the issuance, sale and delivery by the County of the Bonds, at one time or from time to time, and in one or more series or subseries, in an aggregate principal amount not to exceed Twenty Three Million Dollars ($23,000,000), or such lesser amount as may be specified by the County Executive, are hereby authorized, subject to the provisions of the Act and this Resolution. The proceeds of the Bonds will be loaned to the Facility Applicant, as permitted by the Act, pursuant to the terms and provisions of a loan and trust agreement (the "Loan Agreement") to be entered into among the County, the Facility Applicant and a bank, as purchaser of the Bonds or as trustee on behalf of the purchaser(s) of the Bonds (the "Bank"), to be used by the Facility Applicant for the sole and exclusive purpose of financing and refinancing the costs of the acquisition and improvement of the Facilities, within the meaning of the Act. The Bonds and the interest thereon shall be limited obligations of the County, repayable by the County solely from the revenue derived from Loan repayments (principal and interest) made to the County by the Facility Applicant and from any other moneys made available to the County for such purpose. The maximum principal amount of Bonds which may be issued, sold and delivered pursuant to this Resolution is Twenty Three Million Dollars ($23,000,000), unless such amount shall be increased by a resolution supplemental hereto.

Section 5. The County reserves the right, in its sole and absolute discretion, to take any actions which it may deem necessary in order to ensure that the County (i) complies with all federal and State laws, whether proposed or enacted, which may restrict the issuance of its economic development revenue bonds and (ii) issues such bonds to finance

facilities which the County determines, in its sole and absolute discretion, will provide the greatest benefit to the County. Specifically, the County reserves the right to choose to issue its economic development revenue bonds for facilities other than the Facilities and to issue or not to issue such bonds at such times and in order of priority which the County Executive, in his sole and absolute discretion, may determine.

Section 6. The Bonds shall each be designated "Montgomery County, Maryland Economic Development Revenue Bond (St. Andrew's Episcopal School, Inc. Project)." The Bonds may be further identified by the year of issue or such other appropriate designation as the County Executive may approve.

The Bonds shall be dated and shall bear interest at an annual rate or rates, payable at such times, all as approved by the County Executive.

The Bonds shall mature on such date or dates as may be approved by the County Executive, but the last maturity of the Bonds shall in no event exceed a period of thirty (30) years from the date of issuance of the Bonds.

Each of the Bonds shall be executed in the name of the County and on its behalf by the manual or facsimile signature of the County Executive and the manual or facsimile signature of the Director of Finance of the County. The seal of the County or a facsimile thereof shall be affixed to each of the Bonds, and attested by the manual or facsimile signature of the Clerk of the County Council. If deemed appropriate by the County Executive, each of the Bonds may also be authenticated by the manual or facsimile signature of a trustee, registrar or paying agent. At least one of such signatures on each Bond shall be a manual signature.

Section 7. If deemed advisable by the County Executive, and pursuant to the Loan Agreement or a separate indenture of trust with a corporate trustee for the benefit of the holders of the Bonds, the County will assign to the Bank (among other things) all of the County's right, title and interest in and to the Loan Agreement, including (without limitation) the receipts and revenues of the County from the Loan (excepting only certain reserved rights of the County to indemnification by the Facility Applicant, taxes paid by the Facility Applicant to the County, the obligation of the Facility Applicant to make certain payments required by the Code and payments to the County for the County's administrative fees and expenses and the like).

Section 8. In connection with the transactions described herein, the County Executive is hereby authorized and empowered, by executive order or otherwise:

(a) to accept the Letter of Intent, in order to further evidence the present intent of the County to participate in the financing and refinancing of the costs of the acquisition and improvement of the Facilities;

(b) to approve the form and provisions of, execute and deliver the Bonds and the Loan Agreement;

(c) to approve the form and provisions of any preliminary Official Statement, final Official Statement or other offering document with respect to the Bonds;

(d) if necessary, to appoint a trustee or trustees, a bond registrar and paying agent or agents for the Bonds;

(e) to provide for the direct payment by the Facility Applicant of all costs, fees and expenses incurred by or on behalf of the County in connection with the issuance, sale and delivery of the Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel) and compensation to any person (other than full-time employees of the County) performing services by or on behalf of the County in connection therewith; and

(f) to specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents or procedures, including (without limitation) trust indentures, bond purchase agreements, placement agreements, letters of credit, letter of credit agreements, remarketing agreements, deeds of trust, assignments and financing statements, as are necessary or appropriate to consummate the authorization, sale, security, issuance, delivery or payment of or for the Bonds and the making of the Loan.

Section 9. The terms, provisions, form and substance of any and all documents and instruments to be executed or entered into by or for the benefit of the County in connection with the transactions authorized by this Resolution, including all customary closing certificates and documents, shall also be subject to the approval of the County Attorney or the County Attorney's designee prior to the execution and delivery thereof by the appropriate official of the County.

Section 10. In satisfaction of the requirements of Section 147(f) of the Code, the County hereby approves the Facilities and the Bonds.

Section 11. 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 County 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 actions as the County Executive may determine by executive order or otherwise to be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of a Certificate of the County pursuant to Section 148 of the Code and the U.S. Treasury Regulations prescribed thereunder, subject to the limitations set forth in the Act and this Resolution.

Section 12. Unless previously exercised, the authority to issue the Bonds contained in this Resolution shall expire on the date which is one (1) year from the effective date of this Resolution, unless such authority shall have been extended by a resolution supplemental hereto approved by the County Executive.

Section 13. In accordance with the Act, this Resolution shall take effect upon approval by the County Council.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council