

Resolution No.: 20-07
Introduced: March 3, 2020
Adopted: March 3, 2020

**COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND**

By County Council

SUBJECT: Authorizing and empowering Frederick County, Maryland (the “County”) to issue and sell at private (negotiated) sale, upon its full faith and credit, its general obligation bond in an amount not to exceed \$14,000,000 to be known as the “General Obligation Public Facilities Refunding Bond, Series 2020A” (the “Bond”) pursuant to the provisions of Section 19-207 of the Local Government Article of the Annotated Code of Maryland, as amended, for the public purpose of refunding the Frederick County, Maryland, General Obligation Public Facilities Refunding Bond, Series 2015A, and paying certain costs of issuance; prescribing the terms and conditions of the Bond and upon which the Bond shall be issued and sold and other incidental details with respect thereto; authorizing the County Executive to make certain determinations with respect thereto; providing that, in the event that funds available to the County are insufficient to pay the principal of and interest on the Bond that the County shall levy and collect ad valorem taxes upon all the legally assessable property within Frederick County sufficient to provide for such payments when due; providing for the disbursement of the proceeds of the Bond for the purposes of paying as and when due the principal or redemption price of and interest on the bond that is to be refunded; providing for the redemption of the bond being refunded; making certain covenants with respect to the tax-exempt status of interest on the Bond; and generally providing for the issuance of the Bond

R E C I T A L S:

Pursuant to available legal authority, the County issued its Frederick County, Maryland, General Obligation Public Facilities Refunding Bond, Series 2015A, in the original principal amount of \$14,005,000, dated March 19, 2015 (the “2015A Bond”). The 2015A Bond is outstanding as of the date hereof in the principal amount of \$13,655,000, and is subject to prepayment at the option of the County at any time.

Section 19-207 of the Local Government Article of the Annotated Code of Maryland, as amended (the “Refunding Act”) provides in part that any county in the State of Maryland that has the power under any public general or public local law to borrow money and evidence the borrowing by the issuance of its bonds may issue bonds for the purpose of refunding any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, purchase or maturity of the bonds. Refunding bonds issued under the authority of the Refunding Act may be issued for public purposes which include realizing savings to the issuing county in the aggregate cost of debt service on either a direct comparison or present value basis. The power to issue refunding bonds under the Refunding Act is deemed additional and supplemental to the issuing county’s existing borrowing power. The Refunding Act further provides that the procedures for the issuance of such refunding bonds shall be the same as those applicable to the bonds being refunded, except that the refunding bonds may be sold on a negotiated basis without solicitation of bids if the issuing county determines in a public meeting that such procedure is in the public interest.

Pursuant to the Refunding Act, the County has determined to refund the 2015A Bond by the issuance and sale of the County’s General Obligation Public Facilities Refunding Bond, Series 2020A, in an aggregate principal amount not to exceed \$14,000,000 (the “Bond”).

On February 5, 2020, Davenport & Company, in its capacity as financial advisor to the County, solicited proposals from qualified purchasers to purchase the Bond at private (negotiated) sale. Proposals were submitted on February 24, 2020. After review, and upon consultation with Davenport & Company and Venable LLP, bond counsel to the County, the County Executive has determined that the proposal submitted by JPMorgan Chase Bank, N.A. (the “Bank”) is the most favorable proposal for the issuance and sale of the Bond. The Bank’s proposal (the “Proposal”) is attached hereto as Exhibit A and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND:

Section 1. Pursuant to the authority of the Refunding Act, the County has determined to borrow on its full faith and credit a sum not to exceed \$14,000,000 in order to provide for the prepayment of the 2015A Bond and to pay certain costs of issuance related thereto and shall evidence such borrowing by the issuance of its bond in a principal amount not to exceed \$14,000,000.

Section 2. The Bond, when issued, shall be executed in the name of the County by the manual or facsimile signature of the County Executive of Frederick County and the seal of, or a facsimile of the seal of, the County shall be imprinted thereon, and the Bond shall be attested by the manual or facsimile signature of the Chief Administrative Officer and authenticated by the manual signature of the Bond Registrar. The County shall serve as the Bond Registrar and Paying Agent with respect to the Bond, subject to further action by the County.

In the event any official of the County, whose signature shall appear on any Bond described in this Resolution, or on other documents pertaining thereto, shall cease to be such official prior to the delivery of said Bond, or document, or in the event that any official shall take office subsequent to the sale of the Bond, his/her signature shall nevertheless be valid, sufficient and binding for the purposes herein intended.

Section 3. The County hereby authorizes the sale and delivery of the Bond to the Bank, substantially on the terms of the Proposal but subject to the provisions of Section 4. The County hereby finds and determines that the issuance of the Bond and the refunding of the 2015A Bond in accordance with the provisions hereof will realize for the County a savings in the total cost of debt service on a present value basis, is in the best interests of the County, is consistent with the County's long-term financial plan, and realizes the County's financial objective of generating net present value debt service savings on an aggregate basis. The County hereby further finds and determines that the sale of the Bond to the Bank in accordance with the terms of the Proposal is in the public interest.

Section 4. The Bond shall be in such form, shall be payable as to principal in such amounts and on such dates, shall mature on such date, shall bear interest at such rate or rates, shall be payable at such times and in such amounts, and shall be issued and sold pursuant to such instruments and agreements as shall be specified by the County Executive, consistent with the terms of the Proposal. The Bond shall be issued as a fully registered bond registered on the Bond Register kept for that purpose by the County, and shall be registered and transferred in accordance with the terms and conditions set forth in the Bond. The execution and delivery of the Bond and any related instruments or agreements by the County Executive shall be conclusive evidence of the approval by the County of the form of the Bond and such instruments or agreements, the terms thereof and of the due execution thereof by the County.

Section 5. All of the expenses relating to the issuance and sale of the Bond, including legal fees of the County and the fees and expenses of the financial advisor, may be paid from the gross proceeds received from the sale of the Bond. After providing for such expenses, the balance of the proceeds from the sale of the Bond shall be deposited in a separate account to be held solely for the purpose of prepaying the 2015A Bond in whole, including accrued and unpaid interest (if any).

Section 6. The County hereby specifically and irrevocably elects to prepay on such date as shall be determined by the Director of Finance, in her discretion and in accordance with applicable law, the 2015A Bond.

Section 7. For the purposes of paying the interest on and principal of the Bond hereby authorized as such interest and principal comes due, the County shall include in the levy against all legally assessable property in Frederick County, in each and every fiscal year of the County that any of said Bond is outstanding, *ad valorem* taxes sufficient to provide such sums as the County may deem sufficient and necessary in conjunction with any other funds that will be available for the purpose, to provide for the payment of the interest on the Bond coming due in each such year and to pay the principal of the Bond maturing in each such fiscal year. In the event the proceeds from taxes so levied in any such fiscal year shall prove inadequate for such purposes, additional taxes shall be levied in the succeeding fiscal years to make up such deficiency. The full faith and credit and unlimited taxing power of the County are hereby irrevocably pledged to the punctual payment of the maturing principal of and interest on the Bond hereby authorized as and when such principal and interest comes due and to the levy and collection of the taxes hereinabove prescribed as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of said Bond. The County hereby solemnly covenants to take all action as may be appropriate from time to time during the period that the Bond remains outstanding and unpaid to provide the funds necessary to make said principal and interest payments. The County further covenants and agrees to levy and collect the taxes hereinabove prescribed.

The County may apply to the payment of the principal of and interest on the Bond any funds received by it and available for such purpose from the State of Maryland, the United States of America, any agency or instrumentality thereof, or from any other source, and, to the extent any such funds are received or receivable in any fiscal year, taxes that might otherwise be required to be levied hereunder may be reduced or need not be levied.

The Bond shall be deemed to be paid and no longer to be outstanding when payment of the principal of the Bond plus interest thereon to the due dates thereof (whether such due date be by reason of maturity or upon redemption) shall have been made or caused to have been made in accordance with the terms thereof.

Section 8. The Bond shall be issued with the expectation that the interest thereon will be excludable from the gross income of the holders thereof for federal income tax purposes. The County Executive and the Director of Finance shall be responsible for the execution and delivery of a certificate of the County which complies with the requirements of Section 103 and Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder and counsel rendering an opinion on the validity of the Bond on the date of the issuance of the Bond ("Bond Counsel").

The County shall set forth in said certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond, or of any moneys, securities or other obligations which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code or the said regulations (collectively, the "Bond Proceeds"). The County covenants with each of the holders from time to time of the Bond that the facts, estimates and circumstances set forth in the said certificate will be based on the County's reasonable expectations on the date of issuance of the Bond and will be, to the best of the knowledge of the person executing such certificate, true, correct and complete as of that date.

The County covenants with each of the holders from time to time of the Bond that it will not use, or permit the use of any of, the Bond Proceeds or any other funds of the County, directly or indirectly, to acquire any securities or obligations, and will not take or permit to be taken or fail to take any other action or actions which would cause the Bond to be an "arbitrage bond" within the meaning of said Section 148 and said regulations or that would otherwise cause the interest on the Bond to be includable in gross income of the holder of the Bond for federal income tax purposes.

The County further covenants that it will comply with said Section 148 and said regulations and such other requirements of the Code which are applicable to the Bond on the date of issuance of the Bond and which may subsequently lawfully be made applicable to the Bond.

The County will hold and shall invest Bond Proceeds within its control (if such proceeds are invested) in accordance with the expectations of the County set forth in said certificate.

The County shall make timely payment of any rebate amount or payment in lieu thereof (or installment thereof) required to be paid to the United States of America in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Bond and shall include with any such payment such other documents, certificates or statements as shall be required to be included therewith under then applicable law and regulations.

The County Executive, the Chief Administrative Officer or the Director of Finance may execute a certificate or certificates supplementing or amending said certificate, and actions taken by the County subsequent to the execution of such certificate shall be in accordance with said certificate as amended or supplemented; provided, however, that the County shall execute any such certificate only upon receipt by it of an opinion of Bond Counsel addressed to the County to the effect that actions taken by the County in accordance with the amending or supplementing certificate will not adversely affect the exclusion from gross income for federal income taxation purposes of interest on the Bond.

The County shall retain such records as necessary to document the investment and expenditure of Bond Proceeds, the uses of Bond Proceeds and of the facilities financed with such proceeds, together with such other records as may be required by the tax certificate or the IRS in order to establish compliance with requirements of the Code and the regulations thereunder as conditions to the exclusion of the interest on the Bond from federal gross income.

Section 9. The County hereby covenants with the owners from time to time of the Bond that it shall not take or cause to be taken any action or fail to take any action, the taking of which or the omission of which, under the law existing on the date of issuance of the Bond, or which may subsequently lawfully be made applicable to the Bond, would cause the interest on the Bond to become subject to federal income taxation.

Section 10. The County Executive, the Chief Administrative Officer, the Director of Finance and such other officers, officials and employees of the County as the County Executive shall designate, are authorized hereby to do any and all things, execute all instruments, documents

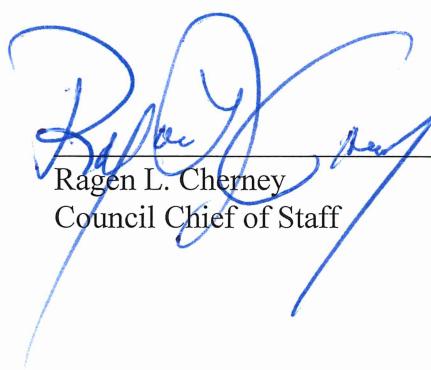
and certificates, and otherwise take all action necessary, proper, or expedient in connection with the issuance, sale and delivery of the Bond. The County Executive, the Chief Administrative Officer, the Director of Finance, and all other officers, officials and employees of the County are authorized and directed hereby to do all acts and things required of them by the provisions hereof and of the Bond for the full, punctual, and complete performance of all of the terms, covenants, provisions and agreements of this Resolution and the Bond.

Section 11. This Resolution shall take effect from the date of its adoption.

Adopted this 3rd day of March, 2020.

The undersigned hereby certifies that this Resolution was approved and adopted on the 3rd day of March, 2020.

ATTEST:


Ragen L. Cherney
Council Chief of Staff

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

By: 
M. C. Keegan-Ayer
President 

EXHIBIT A

BANK PROPOSAL

J.P.Morgan

Frederick County, Maryland
General Obligation Refunding Bond, Series 2020A
Summary of Terms and Conditions

February 24, 2020

This Summary of Terms and Conditions (the "Term Sheet") is confidential and is intended as a statement of indicative terms only, and is provided to facilitate additional discussion. It is a proposal for your consideration only and not a commitment by JPMorgan Chase Bank, N. A. or its affiliates ("JPMorgan") to provide the financing described in this Term Sheet or any other financing. The rates and fees set forth in this proposal are indicative and are subject to market conditions at all times until JPMorgan would commit to them in writing and, in any event should not be regarded as indicative after the date of this Term Sheet. Subject to the foregoing, the terms in this proposal expire on **March 2, 2020**.

PRINCIPAL INDICATIVE TERMS:

Series	General Obligation Refunding Bond, Series 2020A
Purchaser	DNT Asset Trust, a Delaware statutory trust, wholly owned subsidiary of JPMorgan Chase Bank, N.A., and an accredited investor and qualified institutional buyer.
Issuer	Frederick County, Maryland
Facility/Amount	A single maturity non-bank qualified Bond in an amount of approximately \$13,840,000
Purpose	Proceeds of the Bond would be used to refinance the outstanding, callable maturities of the General Obligation Refunding Bonds, Series 2015A and pay the costs of issuance of the 2020A Bond.
Interest Rates** See attached Appendix for additional details	1.488% (Non-Callable) 1.632% (Callable in full after 3 years from closing) 1.584% (Callable in full after 4 years from closing) 1.528% (Callable in full after 5 years from closing)
Closing Date:	On or about April 2, 2020
Bond Maturity Date:	June 1, 2027
Legal Fees	Bank to pay the cost of Purchaser legal fees. Eric Sender of Kutak Rock LLP to be engaged to represent the Purchaser. Attorney's phone number is 404-222-4633.

**interest rates are indicative until commitment letter and rate lock letter executed by Issuer.

Additional customary terms and explanations follow in the attached Appendix

APPENDIX

OTHER PURCHASE REQUIREMENTS

Bondholder Representative:	JPMorgan Chase Bank, N.A. (the "Bank") and its successors and assigns, or any other entity subsequently appointed by the majority of the bondholders, shall act as the representative on behalf of the bondholders and shall be the party which provides consent, direct remedies and takes all actions on behalf of the Purchaser and other bondholders under the Bond Documents.
All or Nothing:	The Bond would be purchased at 100% of Par on an 'all or none' basis.
No Bond Rating:	While Purchaser is a bondholder, the Bonds shall not be rated by any rating agency, shall not be initially registered to participate in DTC, shall not contain a CUSIP number and shall not be marketed pursuant to any Official Statement, Offering Memorandum or any other disclosure documentation. The Purchaser shall take physical delivery of the Bond at closing.

INTEREST RATES, PAYMENTS AND FEES

Bond Payments / Amortization:	Interest would be payable semi-annually commencing on June 1, 2020. Principal would be payable annually commencing on June 1, 2020. Amortization will be as set forth in the RFP.
Remedies Upon Event of Default:	Upon the occurrence of an Event of Default interest on the Bond would be computed at the Default Rate (defined below). The Purchaser would be permitted to avail itself of any remedies available at law or in equity.
Prepayment:	Any prepayment of the Bond shall be subject to breakage costs payable by the Issuer. No other prepayments on the Bond shall be permitted.
Day Basis/Year:	30/360.
Maximum Interest Rate:	No limitation would exist in the applicable bond documentation or authorizing resolution that restricts the interest rate to any rate lower than the maximum rate permitted by law.
Base Rate:	The higher of (i) the Bank's Prime Rate and (ii) 2.5% plus the one month Adjusted LIBOR Rate, as such terms would be more particularly described in the related bond documents.
Default Rate:	Base Rate + 4.00%

OTHER BOND TERMS AND PROVISIONS

Security:	General obligation pledge of the full faith and credit of Frederick County, Maryland
Drawdown:	The proceeds of the Bond would be fully drawn on the date of issuance.
Required Documents:	The terms of this financing would be evidenced by agreements, instruments and documents (collectively, the "Bond Documents") that are usual and customary for a Direct Purchase Bond

J.P.Morgan

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transaction. The required documentation would include, but not limited to, the terms and conditions outlined herein as well as the Purchaser's standard provisions with respect to representations and warranties, covenants, events of default, remedies, conditions precedent, right of set-off, compliance with anti-corruption laws and other general provisions that the Purchaser and its counsel deem necessary and would otherwise be satisfactory in form and substance to the Purchaser and its counsel.

Conditions Precedent: Usual and customary representations and warranties and other conditions prior to the issuance of the Bond for like situated issuers and for the type and term of the Facility, including absence of default, absence of material litigation and absence of material adverse change from the Issuer's financial conditions and operations as reflected in the financial statements of the Issuer as of June 30, 2019.

Additional conditions precedent would include delivery of acceptable bond documentation and legal opinions, including an opinion of bond counsel as to the validity and enforceability of the obligations of the Issuer under the Bond Documents and that interest payable on the Bond is exempt from federal and State of Maryland income taxation.

Reporting Covenants: The Issuer would provide the following items in an electronic format acceptable to the Purchaser:

1. CAFR within 275 days on the end of the Issuer's fiscal year.
2. Additional publicly-available financial reports and information relating to the Issuer as the Purchaser shall reasonably request.

Tax Gross-Up: If the interest payable on the Bond becomes taxable for any reason, the interest rate would increase from the effective date of such taxability to a taxable equivalent rate.

The Purchaser shall afford the Issuer the opportunity, at the Issuer's sole cost and expense, to contest any challenge to the validity of the tax exemption with respect to the interest on the Bonds, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals). As a condition precedent to the exercise such right, the Issuer shall, on demand, immediately reimburse the Purchaser for (i) any and all expenses that may be incurred by the Purchaser in connection with any such contest, and (ii) any and all penalties or other charges payable by the Purchaser for failure to include such interest in its gross income.

Governing Law: All aspects of the Facility including this Term Sheet and any Bond Documents would be governed by the laws of the State of Maryland.

OTHER PURCHASER REQUIREMENTS

Municipal Advisor

Disclosure:

The Issuer acknowledges and agrees that (i) the transaction contemplated herein is an arm's length commercial transaction between the Issuer and the Purchaser and its affiliates, (ii) in connection with such transaction, the Purchaser and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), agent or a fiduciary of the Issuer, (iii) the Purchaser and its affiliates are relying on the bank exemption in the Municipal Advisor Rules, (iv) the Purchaser and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the Issuer with respect to the transaction contemplated hereby and

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the discussions, undertakings and procedures leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has provided other services or advised, or is currently providing other services or advising the Issuer on other matters), (v) the Purchaser and its affiliates have financial and other interests that differ from those of the Issuer, and (vi) the Issuer has consulted with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

Expenses: The Issuer would pay or reimburse the Purchaser for all its reasonable out-of-pocket costs and expenses where not prohibited by applicable law and incurred in connection with (i) the development, preparation and execution of the Bond, and (ii) in connection with the enforcement or preservation of any rights under any agreement, any amendment, supplement, or modification thereto, and any other loan documents both before and after judgment.

Information Sharing: The Issuer would agree that the Purchaser may provide any information or knowledge the Purchaser may have about the Issuer or about any matter relating to the Facility described in this Term Sheet to JPMorgan Chase & Co., or any of its subsidiaries or affiliates or their successors, or to any one or more purchasers or potential purchasers of the Bond, or participants or assignees of the Bond or the Facility described in this letter.

Website Disclosure: As a best practice to maintain transparency, final bond documentation may be posted by the Issuer on a national public bond market repository provided that certain information be redacted by the Issuer as requested by the Purchaser. Items that should be redacted include data that could be construed as sensitive information, including, without limitation, signatures/names, addresses and other contact information of the parties' representatives, account numbers, wire transfer and payment instructions, to the extent that such redactions would not violate any of Issuer's disclosure obligations under applicable SEC and MRSB rules.

Confidentiality: This Term Sheet is for the Issuer's confidential review and may not be disclosed by it to any other person other than its employees, attorneys, board members and financial advisors (but not other commercial lenders), and then only in connection with the transactions being discussed and on a confidential basis, except where disclosure is required by law, or where the Purchaser consents to the proposed disclosure.

Purchaser Credit Decision: Satisfactory final due diligence, in the Purchaser's sole discretion, would be required consisting of, but may not be limited to, full review of requested financial statements and financing documents and discussions with management and other background due diligence of the Issuer and its management. Should the Issuer request financing substantially on the terms and conditions described in this Term Sheet, the Purchaser's credit decision would be made promptly after receipt of such request and completion of due diligence.

Bank Contacts:

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If you have any questions regarding the above indicative terms, please do not hesitate to contact either of us.

Sincerely,


Domenic Patalano
Authorized Officer