

Resolution No.: 24-18
Introduced: April 16, 2024
Adopted: April 16, 2024

**COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND**

By County Council

SUBJECT: Authorizing and empowering Frederick County, Maryland (the “County”) to enter into an agricultural land preservation installment purchase agreement (the “Installment Purchase Agreement”) in order to preserve certain agricultural land within the County; authorizing the County Executive of the County to execute the Installment Purchase Agreement on behalf of the County; making certain legislative findings among others concerning the public benefit and purpose of the Installment Purchase Agreement; providing that payments under the Installment Purchase Agreement shall constitute an indebtedness and charge against the general credit and taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation; and generally providing for and determining various matters and details in connection with the authorization and execution of the Installment Purchase Agreement

R E C I T A L S

Ordinance No. 02-01-297, approved by the Board of County Commissioners of Frederick County (the “Board”) on January 15, 2002, effective February 1, 2002, as amended by Ordinance No. 02-20-316, approved by the Board on October 15, 2002, effective October 15, 2002, as amended by Ordinance No. 06-32-428, approved by the Board on September 26, 2006, effective September 26, 2006, as amended by Ordinance No. 07-35-475, approved by the Board on November 27, 2007, effective November 28, 2007, as amended by Ordinance No. 14-23-678, approved by the Board on November 13, 2014, effective December 1, 2014, codified as Section 1-13-35 of the Frederick County Code (as so amended, the “IPA Act”), authorizes County Commissioners of Frederick County to enter into installment purchase agreements to acquire development rights on certain agricultural lands located within Frederick County, Maryland (the “County”) for the purposes of accelerating land preservation easement purchases, preserving productive agricultural land and woodland within the County and protecting farmland and open space from the impacts of development.

Pursuant to the provisions of Section 808 of the Charter of Frederick County, the authorization of the County Commissioners of Frederick County are deemed to be authorizations of the County Council of Frederick County (the “County Council”).

Bill No. 19-19 (the "Bond Bill"), enacted by the County Council on January 21, 2019, authorizes and empowers the County to borrow, from time to time, not more than \$200,000,000 in order to finance the cost of certain public facilities in the County. As of the date hereof, the County has previously incurred \$173,128,473 of indebtedness pursuant to the Bond Bill, leaving a balance of \$26,871,527 of available borrowing authority under such Bill.

The Bond Bill provides that such borrowing may be undertaken in the form of installment purchase obligations executed and delivered by the County for the purpose of acquiring agricultural land and woodland preservation easements.

Pursuant to the authority of the IPA Act and the Bond Bill, the County has agreed to acquire the development rights on approximately 125.6937 acres of land owned in fee simple by Bonnie L. Baust and Bruce Edward Baust (together, the "Owners"), located on New Cut Road (Tax Map 26, Parcel 34), within Election District 04 (Creagerstown), Frederick County, Maryland (the "Baust Property") and intends to enter into an agricultural land preservation installment purchase agreement (the "Installment Purchase Agreement") with the Owners.

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

Section 1. That, pursuant to the IPA Act and the Bond Bill, it is hereby found and determined as follows:

(i) the acquisition of agricultural land preservation easements will supplement the County's existing local agricultural land preservation program to encourage the preservation of agricultural land and to protect and preserve farming;

(ii) the execution of the Installment Purchase Agreement in exchange for an agricultural land preservation easement will promote the health, welfare and safety of the residents of the County;

(iii) the Installment Purchase Agreement shall constitute an indebtedness and general obligation of the County and a charge against, and a pledge of the general credit and taxing power of, the County within the meaning of any applicable constitutional or charter provision or statutory limitation;

(iv) the Baust Property meets all of the criteria set forth in Section 1-13-35(C) of the Frederick County Code to qualify for approval under the "Installment Preservation Program" within the meaning of the IPA Act; and

(v) all capitalized terms not defined herein shall have the meanings given them in the Installment Purchase Agreement.

Section 2. Pursuant to the authority of the IPA Act and the Bond Bill, the County hereby approves the acquisition of the Development Rights on the Baust Property at a price of \$397,025.00, pursuant to the Installment Purchase Agreement No. 24-146, which shall be

substantially in the form attached hereto as Exhibit A and made a part hereof (the "Installment Purchase Agreement"). Such acquisition shall be accomplished in accordance with the terms and provisions set forth of the Installment Purchase Agreement. The interest rate payable under the Installment Purchase Agreement shall be established by the County prior to closing on the purchase of the Development Rights based on the County's yield on securities acquired to pay the balance of the Purchase Price on the Principal Payment Date and shall be incorporated into the final form of the Installment Purchase Agreement. The County hereby approves the acquisition by the County of such securities at such prices and on such terms as determined by any of the County Executive, the Chief Administrative Officer or the Director of Finance, or such other officers, officials and employees of the County as the County Executive shall designate. Principal and interest on the Installment Purchase Agreement shall be payable at such times and in such places as shall be set forth in Exhibit A. The acquisition of the Development Rights shall be evidenced by a Deed of Easement from the Owners to the County, which shall be substantially in the form attached to the Installment Purchase Agreement as Exhibit C. The County hereby approves the Deed of Easement substantially in such form.

Section 3. Pursuant to the authority of the Bond Bill, the County has determined to borrow on its full faith and credit a sum not to exceed \$397,025.00 and shall evidence such borrowing by the issuance of the Installment Purchase Agreement.

Section 4. The Installment Purchase Agreement shall be executed in the name of the County by the County Executive. The corporate seal of the County shall be affixed to the Installment Purchase Agreement and attested by the signature of the Chief Administrative Officer. The Installment Purchase Agreement shall be a valid and legally binding full faith and credit obligation of the County enforceable in accordance with its terms.

The execution of the Installment Purchase Agreement by such officer shall be conclusive evidence of the due execution of the Installment Purchase Agreement by the County.

In the event that funds available to the County from all sources are insufficient to pay the principal of or the interest on the Installment Purchase Agreement in any fiscal year in which such sums are due, the County shall levy in such fiscal year upon all legally assessable property within the corporate limits of Frederick County ad valorem taxes in rate and amount sufficient to provide for the prompt payment of such principal and interest on the Installment Purchase Agreement in such fiscal year, and, if the proceeds from the collection of taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency. The full faith and credit and unlimited taxing power of the County are hereby irrevocably pledged to the payment of the Installment Purchase Agreement as and when it becomes due and payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Installment Purchase Agreement. The County hereby covenants and agrees with the registered owner of the Installment Purchase Agreement to levy and collect the taxes hereinabove described and to take any action that may be appropriate from time to time during the period that the Installment Purchase Agreement remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

Section 5. If so required, the County Executive, the Chief Administrative Officer or the Director of Finance shall be responsible for the execution and delivery of any certificate of the County which complies with the requirements of (a) Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Treasury regulations promulgated thereunder (the "Treasury Regulations"), and (b) counsel rendering an opinion, if any, on the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made by the County pursuant to the Installment Purchase Agreement ("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 advanced, if any, under the Installment Purchase Agreement or of any moneys, securities or other obligations which may be deemed to be proceeds under the Installment Purchase Agreement pursuant to said Section 148 or the said Treasury Regulations (collectively, the "Proceeds") based on the County's reasonable expectations on the date of issuance of the Installment Purchase Agreement 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 will comply with said Section 148 and said Treasury Regulations and such other requirements of the Code and Treasury Regulations which are applicable to the Installment Purchase Agreement on the date of issuance of the Installment Purchase Agreement and which may subsequently lawfully be made applicable to the Installment Purchase Agreement.

The County will hold and shall invest Proceeds, if any, 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 the interest portion of payments to be made by the County pursuant to the Installment Purchase Agreement 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 certificates 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 the interest portion of payments to be made by the County pursuant to the Installment Purchase Agreement.

The County shall retain such records as necessary to document the investment and expenditure of Proceeds, the uses of 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 interest on the Installment Purchase Agreement from federal gross income.

Section 6. The County hereby covenants with the Owners from time to time of interests in the Installment Purchase Agreement 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 Installment Purchase Agreement, or which may subsequently lawfully be made applicable to the Installment Purchase Agreement, would cause the interest portion of payments to be made by the County pursuant to the Installment Purchase Agreement to be includable in the gross income of such Owners for federal income tax purposes.

Section 7. The County Executive, the Chief Administrative Officer and the Director of Finance, and such other officers, officials and employees of the County as the County Executive shall designate, are hereby severally authorized to do any and all things, execute all instruments, documents, certificates and otherwise take all actions necessary, proper or expedient in connection with the Installment Purchase Agreement, including but not limited to, the purchase of securities to provide for the Purchase Price and the execution and recording of the Deed of Easement.

Any provision of this Resolution authorizing any official or officer of the County to exercise authority or perform duties shall extend to any person duly exercising the duties of such official or officer on an acting or temporary basis.

Shannon O'Neil is hereby authorized to fill in any blanks in the documents which may require completion after the signing thereof, to sign any settlement sheet on behalf of the County, and to make any and all other necessary changes, additions or modifications thereto (including but not limited to any changes to the dates thereof), in consultation with McGuireWoods LLP, as Bond Counsel, so long as the substance of such documents is not materially altered thereby.

Section 8. This Resolution takes effect from the date of its adoption.

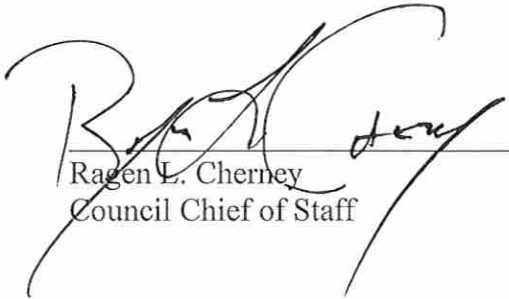
Adopted this 16th day of April, 2024.

[Remainder of Page Left Blank Intentionally]

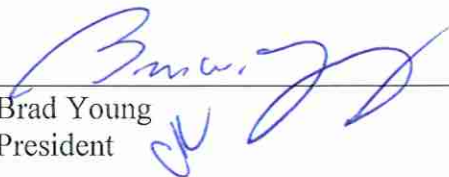
The undersigned hereby certifies that this Resolution was approved and adopted on the 16th day of April, 2024.

ATTEST:

**COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND**



Ragen L. Cherney
Council Chief of Staff

By: 

Brad Young
President

Exhibit A

FORM OF INSTALLMENT PURCHASE AGREEMENT

(attached)

185888172_2