

Resolution No.: 17- 11
Introduced: June 6, 2017
Adopted: June 6, 2017

**COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND**

By County Council

SUBJECT: Authorizing and empowering Frederick County, Maryland (the "County") to issue, sell and deliver, at any one time or from time to time, its revenue bonds in one or more series and in an original aggregate principal amount not to exceed \$10,500,000, pursuant to the provisions of Subtitle 1 of Title 12 of the Economic Development Article of the Annotated Code of Maryland, as amended, in order to loan the proceeds thereof to St. John's Catholic Preparatory School, Inc., a nonprofit Maryland corporation (the "Borrower"), for the sole and exclusive purposes described in this resolution; approving, pursuant to notice and following a public hearing, the issuance of the revenue bonds requested in the letter of intent from the Borrower to the County dated April 28, 2017; accepting said letter of intent; making certain legislative findings, among others, concerning the public benefit and purpose of such revenue bonds; **providing that such revenue bonds and the interest thereon shall be limited obligations of the County, repayable solely from the revenues derived from loan repayments (both principal and interest) made by the Borrower or other money made available to the County for such purpose, and that such revenue bonds and the interest on them are not debts or charges against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation and may not give rise to any pecuniary liability of the County;** authorizing and empowering the County Executive of the County, prior to the issuance, sale and delivery of such revenue bonds, to prescribe the rate or rates of interest such revenue bonds are to bear, the form, tenor, terms and conditions of and security for such revenue bonds, and to prescribe, determine, provide for and approve various other matters, details, documents and procedures in connection with the authorization, issuance, security, sale and payment for such revenue bonds; and generally providing for and determining various matters and details in connection with the authorization, issuance, security, sale and payment of such revenue bonds.

R E C I T A L S:

Subtitle 1 of Title 12 of the Economic Development Article of the Annotated Code of Maryland, as amended (the "Act"), empowers all the counties and municipalities of the State of Maryland to issue revenue bonds and to loan the proceeds of the sale of such revenue bonds to a

facility user (defined below) to finance the acquisition and improvement (as defined in the Act) by such facility user of any facility (as defined in the Act). As defined in the Act, a “facility user” means a person, public or private corporation, or other entity, whether for-profit or not-for-profit, that owns, leases, or uses all or a part of a facility.

The legislative purposes of the Act are to (a) relieve conditions of unemployment in the State of Maryland (the “State”), (b) encourage the increase of industry and commerce and a balanced economy in the State, (c) assist in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State, (d) promote economic development, (e) protect natural resources and encourage resource recovery and (f) promote the health, welfare, and safety of the residents of the State.

Frederick County, Maryland a body politic and corporate and a political subdivision of the State (the “County”), has received a letter of intent dated April 10, 2017 in the form attached hereto as Exhibit A (the “Letter of Intent”) from St. John’s Catholic Preparatory School, Inc., a nonprofit Maryland corporation (the “Borrower”), a “facility applicant” as defined in the Act, in which it is requested that the County participate in the financing and refinancing of certain facilities as described herein by the County’s issuance of its limited obligation revenue bonds in an original aggregate principal amount not to exceed \$10,500,000 and by loaning the proceeds thereof to the Borrower upon the terms and conditions of a loan or similar agreement to be entered into between the County and the Borrower (the “Loan Agreement”), as permitted by the Act (such loan being herein referred to as the “Loan”). The proceeds of the Loan shall be used to finance and refinance the acquisition and improvement (within the meaning of the Act) by the Borrower of a certain facility (within the meaning of the Act) to consist of and include (1) the 45-acre (approximate) property located at 4055 Buckeystown Pike, Frederick, Maryland 21704 and all improvements thereon, (2) the 20-acre (approximate) property located at 3989 Buckeystown Pike, Buckeystown, Maryland 21717 and all improvements thereon, including without limitation, a school building containing approximately 40,000 square feet and additional capital improvements made to such 20-acre (approximate) property after the purchase thereof by the Borrower, including the build-out of the wing to add 8 classrooms, classroom upgrades, the expansion of the cafeteria, the reconfiguration of office space, the addition of locker and changing rooms and gymnasium renovations, and (3) new capital improvements to begin in 2017, including (a) an addition containing approximately 10,000 square feet to house further expansion of the cafeteria, 4 classrooms and multi-purpose space and (b) renovations and upgrades to the athletic facilities, including bleacher seating for approximately 800 including an incorporated press box measuring approximately 192 square feet, turf field, scoreboard, concession stand measuring approximately 288 square feet and fencing (collectively, “Facility”).

The Borrower is a 501(c)(3) organization that owns and operates and will continue to own and operate the Facility. The Facility is a “facility” as defined in the Act.

The County, in compliance with Section 147(f) of the Internal Revenue Code of 1986, as amended, held a public hearing on June 6, 2017, pursuant to notice (in the form attached hereto as Exhibit B) published in a newspaper of general circulation in Frederick County on May 23, 2017 for the purpose of apprising affected residents of Frederick County, Maryland of the proposed issuance of the Bonds (defined below) and allowing such residents to appear and be heard

concerning the issuance of the Bonds and the location and nature of the Facility. The County has determined following such public hearing, and after having duly considered the necessity for the issuance of the Bonds for competitive economic development purposes to insure job opportunities and to provide for a sufficient tax base, that there will be a substantial public benefit from the issuance of the Bonds, that the issuance of the Bonds to finance and refinance the Facility is in the public interest and for a public purpose and by this Resolution has given its approval thereto.

The County, based upon the findings and determinations set forth below, has determined to participate in the financing and refinancing of the Facility by (a) issuing, selling and delivering its revenue bonds in an original aggregate principal amount not to exceed \$10,500,000 (the "Bonds"), and (b) loaning the proceeds of the Bonds to the Borrower upon the terms and conditions of the Loan Agreement, as permitted by the Act.

The Loan Agreement will require the Borrower (a) to use the proceeds of the Bonds solely to finance and refinance the acquisition and improvement of the Facility (except to the extent of amounts permitted to be expended for other purposes under the Act and by the Loan Agreement), and (b) to make payments which will be sufficient to enable the County to pay the principal of and interest and premium, if any, on the Bonds when and as the same shall become due and payable.

As security for the Bonds, the County may enter into a trust agreement with one or more corporate trustees or a purchase or assignment agreement with the purchaser of the Bonds, pursuant to which, the County will assign to such trustee or purchaser, among other things, and excepting the right of the County to indemnification and to payments to the County for expenses, all of the County's right, title and interest in and to, and remedies with respect to the Loan Agreement and any other document or instrument relating to the Loan, and any and all other property of every description and nature from time to time by delivery or by writing of any kind conveyed, pledged, assigned or transferred, as and for additional security for the Bonds.

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

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

(1) The issuance and sale of the Bonds by the County pursuant to the Act in order to lend the proceeds thereof to the Borrower for the sole and exclusive purpose (except to the extent of amounts permitted to be expended for other purposes under the Act and by the Loan Agreement) of financing and refinancing the acquisition and improvement by the Borrower of the Facility will facilitate and expedite the acquisition and improvement of the Facility by the Borrower.

(2) The acquisition and improvement of the Facility by the Borrower and the financing and refinancing thereof as provided in this Resolution will promote the declared legislative purposes of the Act by (a) relieving conditions of unemployment in the State; (b) encouraging the increase of industry and commerce and a balanced economy in the State, (c) assisting in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State; (d) promoting economic development; (e) protecting natural resources and encouraging resource recovery; and (f) promoting the health, welfare and safety of the residents of the State.

(3) The Act authorizes facility financing, or a refunding thereof, to be accomplished in the form of a loan by the County to the Borrower. The loan form of transaction avoids indirect costs and burdens on the County by eliminating any direct involvement by the County in the acquisition, ownership or administration of the Facility while permitting the imposition of ample controls on the use of the proceeds of the Bonds, thus insuring that the public purposes of the Act and the bond transactions are fully accomplished. Because it is in the best interests of the citizens of the County to finance and refinance the acquisition and improvement of the Facility by a loan to the Borrower, this Resolution contemplates and authorizes a transaction in the form of a loan of the proceeds of the Bonds by the County to the Borrower. Accordingly, this Resolution, together with one or more executive orders (the "Executive Order") to be executed by the County Executive of the County (the "County Executive") prior to the issuance, sale and delivery of the Bonds, the Loan Agreement and any other instrument pertaining to the issuance, sale or delivery of the Bonds, including those instruments approved by the Executive Order (such other instruments, together with the Loan Agreement, collectively, the "Bond Documents"), contains, or shall contain, such provisions as the County deems appropriate to effect the financing and refinancing of the acquisition and improvement by the Borrower of the Facility by the loan form of transaction.

(4) **THE BONDS, THE PREMIUM, IF ANY, THE PURCHASE PRICE THEREOF AND THE INTEREST ON THE BONDS ARE LIMITED OBLIGATIONS OF THE COUNTY. THE PRINCIPAL OF, PREMIUM, IF ANY, THE PURCHASE PRICE OF AND INTEREST ON THE BONDS ARE PAYABLE SOLELY FROM THE REVENUES DERIVED FROM LOAN REPAYMENTS (BOTH PRINCIPAL AND INTEREST) MADE BY THE BORROWER OR OTHER MONEY MADE AVAILABLE TO THE COUNTY FOR SUCH PURPOSE. THE BONDS, THE PREMIUM, IF ANY, THE PURCHASE PRICE THEREOF AND THE INTEREST THEREON ARE NOT DEBTS OR CHARGES AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR CHARTER PROVISION OR STATUTORY LIMITATION AND MAY NOT GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COUNTY. THE BONDS ARE NOT A DEBT TO WHICH THE FAITH AND CREDIT OF THE COUNTY IS PLEDGED.** The proceeds of the Bonds, and the payments to be made by the Borrower pursuant to the Loan Agreement, will be paid directly to a trustee or the holders of the Bonds in the event a trustee is not appointed for such purpose to be held and disbursed as shall be approved by the County Executive in the Executive Order. No such monies will be commingled with the County's funds, but are deemed necessary or desirable by the County to insure 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 the financing and refinancing of the acquisition and improvement of the Facility by the Borrower.

(5) The Borrower is a "facility applicant" and a "facility user" as defined in the Act and the Facility will be used by the Borrower in its mission as a 501(c) organization to own and operate a college preparatory school with grades 9 through 12.

SECTION 2. The County hereby approves and is authorized and empowered to issue, sell and deliver, at any time or from time to time, one or more series of Bonds to be to be designated as shall be prescribed in the Executive Order, in an original aggregate principal amount not to exceed \$10,500,000, subject to the provisions of this Resolution. The proceeds of the Bonds will be loaned to the Borrower pursuant to the terms and provisions of the Loan Agreement, to be expended by the Borrower for the sole and exclusive purpose of financing and refinancing the acquisition and improvement of the Facility (except to the extent of amounts permitted to be expended for other purposes under the Act and by the Loan Agreement).

The Letter of Intent is hereby accepted by the County and the County Executive is hereby authorized and directed to execute the Letter of Intent in order to evidence such acceptance. The Letter of Intent is intended to constitute a "letter of intent" as contemplated by the Act.

The authority to issue the Bonds is intended to and shall include the authority to issue revenue refunding bonds. Reference herein to the "Bonds" shall include revenue refunding bonds where appropriate. In the event that any refunding bonds are issued pursuant to this Resolution, the outstanding principal amount of any "refunded bonds" (as hereinafter defined) shall not be taken into account in determining the aggregate principal amount of the Bonds issued, sold and delivered hereunder. The term "refunded bonds" means any bonds (i) for the payment of which (both principal and interest) provision has been made from the proceeds (including any earnings on the investment thereof) of Bonds issued pursuant to this Resolution, or (ii) which have been paid from such proceeds, whether such provisions for payment, or such payment is made at or prior to the maturity thereof.

SECTION 3. This Resolution is intended to be, and shall constitute, evidence of the County's intent to issue and deliver the Bonds authorized hereby in accordance with the terms hereof when the Bonds are sold, provided that the County shall have no duty to obtain a purchaser or purchasers therefor and shall incur no pecuniary liability in the event that the Bonds are not sold.

SECTION 4. The Bonds shall be executed in the name of the County and on its behalf by the County Executive of the County, by his or her manual or facsimile signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the Chief Administrative Officer (or other authorized officer) by his or her manual or facsimile signature. The Bond Documents shall be executed in the name of the County and on its behalf by the County Executive by his or her manual signature, and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the Chief Administrative Officer (or other authorized officer) by his or her manual signature. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds or any of the Bond Documents shall cease to be such officer before the delivery of the Bonds or any of the Bond Documents, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. The County Executive, the Chief Administrative Officer, the County Attorney, the Director of Finance and other officials of the County are hereby authorized and empowered to do all such acts and things and execute such other documents and certificates as the County Executive of the County may deem necessary to carry out and comply with the provisions hereof.

SECTION 5. Prior to the issuance, sale and delivery of the Bonds, the County Executive shall execute the Executive Order pursuant to which the County Executive may (without limitation) specify, determine, prescribe and approve, all within the limitation of this Resolution and the Act, matters, documents and procedures that relate to the authorization, sale, security, issuance, delivery and payment of or for the Bonds, including (without limitation):

- (a) The principal amount of the Bonds to be issued at any one time or from time to time, the rate or rates of interest thereon, the date or dates of maturity thereof, provisions for the payment thereof, prepayment, sinking fund or redemption provisions (if any) thereof, the designation or designations of the Bonds and of any series, the date or dates of issuance thereof;
- (b) the form, tenor, terms and conditions of the Bonds, and provisions for the registration and transfer of the Bonds (if any);
- (c) the form and contents of, and provisions for the execution and delivery of, such financing documents as the County Executive shall deem necessary or desirable to evidence, secure or effectuate the Loan and the issuance, sale and delivery of the Bonds, including (without limitation) any loan agreements, notes, mortgages, security agreements, assignments, guarantees, financing agreements or escrow agreements;
- (d) provision for the payment directly by the Borrower of all expenses of preparing, printing and selling the Bonds, including (without limitation) any and all costs, fees and expenses, incurred by or on behalf of the County in connection with the authorization, issuance, sale and delivery of the Bonds, and all costs incurred in connection with the development of the appropriate legal documents, including fees of counsel to the County, and compensation to any persons (other than full-time employees of the County) or entities performing services for or on behalf of the County in connection therewith and in connection with all other transactions contemplated by this Resolution, whether or not the proposed financing is consummated;
- (e) the creation of security for the Bonds and provision for the administration of the Bonds, including (without limitation) the appointment of such trustees, escrow agents, payment agents, registrars or other agents as the County Executive shall deem necessary or desirable to effectuate the transactions authorized hereby;
- (f) the preparation and distribution, in conjunction with representatives of the Borrower and the prospective purchasers of or underwriters for the Bonds of any series, both a preliminary and a final official statement, placement memoranda or offering circular in connection with the sale of the Bonds of any series, if such preliminary official statement and final official statement, placement memoranda or offering circular are determined to be necessary or desirable for the sale of the Bonds of such series;
- (g) the form and contents of, and provisions for the execution and delivery of, a contract or contracts for the purchase and sale of the Bonds of any series (or any portion thereof); and
- (h) such other matters in connection with the authorization, issuance, execution, sale, delivery and payment of the Bonds, the security for the Bonds and the Loan, and the consummation

of the transactions contemplated by this Resolution as may be deemed appropriate and approved by the County Executive, including (without limitation) establishing procedures for the execution, acknowledgment, sealing and delivery of such other and further agreements, documents, and instruments (including continuing disclosure documents), and the authorization of the officials of the County to take any and all actions, as are or may be necessary or appropriate to consummate the transactions contemplated by this Resolution in accordance with the Act and this Resolution.

SECTION 6. (a) THE BONDS, THE PREMIUM, IF ANY, THE PURCHASE PRICE THEREOF AND THE INTEREST ON THE BONDS ARE LIMITED OBLIGATIONS OF THE COUNTY. THE PRINCIPAL OF, PREMIUM, IF ANY, THE PURCHASE PRICE OF AND INTEREST ON THE BONDS ARE PAYABLE SOLELY FROM THE REVENUES DERIVED FROM LOAN REPAYMENTS (BOTH PRINCIPAL AND INTEREST) MADE BY THE BORROWER OR OTHER MONEY MADE AVAILABLE TO THE COUNTY FOR SUCH PURPOSE. THE BONDS, THE PREMIUM, IF ANY, THE PURCHASE PRICE THEREOF AND THE INTEREST THEREON ARE NOT DEBTS OR CHARGES AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR CHARTER PROVISION OR STATUTORY LIMITATION AND MAY NOT GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COUNTY. THE BONDS ARE NOT A DEBT TO WHICH THE FAITH AND CREDIT OF THE COUNTY IS PLEDGED. In order to implement Section 12-113 of the Act stating that the Bonds may not give rise to pecuniary liability of the County, the Executive Order, the Loan Agreement, the Bonds and the other Bond Documents may provide that no bondholder shall look to the County for damages suffered by such bondholder as a result of the failure of the County to perform any covenant, undertaking or obligation thereunder, nor as result of the incorrectness of any representation made by the County therein. Although this Resolution recognizes that the Bond Documents may not give rise to pecuniary liability of the County, nothing contained in this Resolution or in the Bond Documents shall be construed to preclude in any way any action or proceedings (other than that element in any action or proceeding involving a claim for monetary damages against the County) in any court or before any governmental body, agency or instrumentality, or otherwise against the County or any of its officers or employees to enforce the provisions of any of the Bond Documents.

(b) Although the Bond Documents shall provide that the County shall have the right to seek remedies in the event of a default by the Borrower, it is contemplated that the County will assign the performance of obligations to take action to the trustee for the holder(s) of the Bonds or the purchasers or holder of the Bonds, in order to implement the purposes and intent of the Act, namely to facilitate the financing and refinancing of the acquisition and improvement of the Facility by the Borrower without incurring any pecuniary obligation or liability of the County. Accordingly, if a trustee is appointed for such purpose, the trustee shall have the duty to act, whether or not at the direction of the bondholders, in all instances in which the trustee for such bonds may act and determines that action is appropriate. In any case, where action by the trustee for the Bonds or the purchaser or holder of the Bonds requires simultaneous or subsequent action by the County, the County will cooperate with such trustee or the purchaser or holder of the Bonds and take any and all action necessary to effectuate the purposes and intent of the Resolution and the Bond Documents. The performance by the trustee for the Bonds or the purchaser or holder of the Bonds of obligations

under any of the Bond Documents permits the identification of all costs arising from the exercise of such obligations. The Bond Documents shall provide that the Borrower shall pay those costs in order to avoid any direct or indirect pecuniary burden on the County.

SECTION 7. As permitted by the Act, the Bonds of each series shall be sold at private (negotiated) sale and at par, unless the County Executive, with the consent of the Borrower, deems it to be in the best interests of the County and the Borrower to sell the Bonds of any series at public sale or by retail sale or above or below par, in which event the Bonds of such series shall be sold in such manner, at such price or prices and upon such terms as shall be determined in the Executive Order to be in the best interests of the County and the Borrower. The Bond of each series shall be sold at such times, on such dates and to such persons, firms or corporations (including, without limitation, banks or other financial institutions) as shall be determined by the County Executive, with the consent of the Borrower.

SECTION 8. The provisions of this Resolution are severable, and if any provision, sentence, clause, section or part hereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Resolution or their application to other persons or circumstances and the remaining provisions shall be construed so as to give practical realization to the public purposes intended to be achieved hereunder and the protection against pecuniary liability to be afforded to the County. It is hereby declared to be the legislative intent that this Resolution would have been passed if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and if the person or circumstance to which this Resolution or any part hereof is inapplicable had been specifically exempted therefrom.

SECTION 9. In the event that the financing transactions contemplated by this Resolution shall not have occurred by April 1, 2018, the County's authorization under this Resolution shall terminate unless otherwise extended by resolution of the County Council.

SECTION 10. This Resolution shall take effect upon the date of its approval by the County Executive.

Adopted this 6th day of June, 2017.

The undersigned hereby certifies that this Resolution was approved and adopted on the 6th day of June, 2017.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND


Ragen L. Cherney
Council Chief of Staff

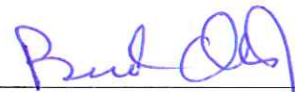
By: 
Bud Otis
President


EXHIBIT A

Letter of Intent

EXHIBIT B

Public Notice