

Resolution No.: 15-20
Introduced: October 6, 2015
Adopted: October 6, 2015

**COUNTY COUNCIL
FOR FREDERICK COUNTY, MARYLAND**

By County Council

SUBJECT: Authorizing and empowering Frederick County, Maryland to enter into an Agricultural Land Preservation Installment Purchase Agreement in order to preserve agricultural land in Frederick County, Maryland; authorizing the County Executive of Frederick County to execute the Agricultural Land Preservation Installment Purchase Agreement on behalf of the County; making certain legislative findings among others concerning the public benefit and purpose of such Installment Purchase Agreement; providing that payments under such Installment Purchase Agreement shall constitute an indebtedness and charge against the general credit and taxing powers of Frederick 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 such 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. 07-35-475, approved by the Board on November 27, 2007, effective November 28, 2007, codified as Section 1-13-35 of the Frederick County Code, as amended (together, 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.

Pursuant to the provisions of Section 808 of the Charter of Frederick County, the authorization of the County Commissioners of Frederick County constitute authorizations of Frederick County, Maryland (the "County").

Chapter 54 of the Laws of Maryland of 2012 (the "2012 Act") authorizes and empowers the County to borrow, from time to time, not more than \$100,000,000.00 in order to finance the cost of certain public facilities in Frederick County. The 2012 Act 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 2012 Act, the County has agreed to acquire the development rights on approximately 113.36875 acres of land owned in fee simple by Tammy M. Wivell and Adam P. Wivell, Surviving Joint Tenants Jeffrey P. Wivell, who died on October 12, 2013 (the "Owner"), on Wivell Road and Four Points Road in Emmitsburg, Maryland (Tax Map 14, Parcel 34), Election District 5, Frederick County, Maryland (the "Wivell Joint Tenants Property") and intends to enter into an agricultural land preservation installment purchase agreement (the "Installment Purchase Agreement") with the Owner.

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

Section 1. That, pursuant to the IPA Act and the 2012 Act, 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) 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 2012 Act, the County hereby approves the acquisition of the Development Rights on the Wivell Joint Tenants Property at a price of \$359,580, pursuant to the Installment Purchase Agreement No. 15-116 substantially in the form attached hereto as Exhibit A (the "Installment Purchase Agreement"). Such acquisition shall be accomplished in accordance with the provisions of the Installment Purchase Agreement. The Installment Purchase Agreement shall be in substantially the form set forth in Exhibit A attached hereto and made a part hereof. The interest rate payable under the Installment Purchase Agreement shall be established by the County prior to closing based on the County's yield on securities acquired to pay the balance of Purchase Price on the Principal Payment Date. 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 Owner to the County in substantially the form attached to the Installment Purchase Agreement as Exhibit C.

Section 3. Pursuant to the authority of the 2012 Act, the County has determined to borrow on its full faith and credit a sum not to exceed \$359,580 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 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 owner 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 the Owner 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 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.

Anne M. Bradley 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) so long as the substance of such documents is not materially altered thereby.

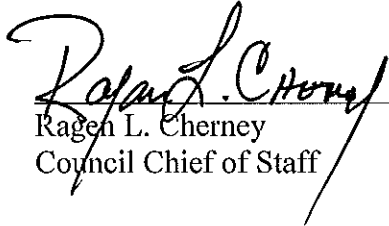
Section 8. This Resolution takes effect from the date of its adoption.

Adopted this 6th day of October, 2015.

The undersigned hereby certifies that this Resolution was approved and adopted on the 6th day of October, 2015.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND


Ragen L. Cherney
Council Chief of Staff

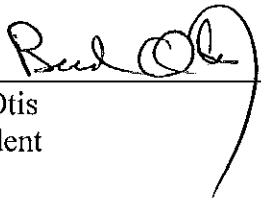
By: 
Bud Otis
President

Exhibit A

INSTALLMENT PURCHASE AGREEMENT