

Resolution No.: 17-248
Introduced: September 13, 2011
Adopted: September 20, 2011

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: To authorize Montgomery County, pursuant to and in accordance with Sections 20-47 through 20-54 of Chapter 20 of the Montgomery County Code, as amended, Section 5(P)(2) of Article 25A of the Annotated Code of Maryland (2005 Replacement Volume and 2010 Supplement), and Section 24 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume) to issue and sell lease revenue bonds of Montgomery County at one time or from time to time, in one or more series, and not upon the faith and credit of Montgomery County, in an amount sufficient to refund certain outstanding lease revenue bonds of Montgomery County; to provide for the sale of such bonds; and generally providing for and determining various matters in connection with the such bonds

Background

1. Pursuant to Section 5(P)(2) of Article 25A of the Annotated Code of Maryland (2005 Replacement Volume and 2010 Supplement), Sections 20-47 through 20-54 of Chapter 20 of the Montgomery County Code, as amended, Resolution No. 14-1032 adopted by the County Council on October 16, 2001, Resolution No. 14-1291 adopted by the County Council on June 4, 2002, and Resolution No. 15-614 adopted by the County Council on May 19, 2004, Montgomery County, Maryland (the "County") issued its \$37,880,000 Lease Revenue Bonds (Metrorail Garage Projects), Series 2002 and its \$4,745,000 Lease Revenue Bonds (Metrorail Garage Projects), Series 2004 (the "Metrorail Project Bonds") to finance and refinance the costs of parking structures and related facilities located at the Shady Grove Metrorail Station and the Grosvenor Metrorail Station (collectively, the "Metrorail Garage Projects"), each located within the County.
2. Pursuant to Section 5(P)(2) of Article 25A of the Annotated Code of Maryland (2005 Replacement Volume and 2010 Supplement), Sections 20-47 through 20-54 of Chapter 20 of the Montgomery County Code, as amended, and Resolution No. 17-228 adopted by the County Council on July 26, 2011, the County expects to issue its lease revenue bonds to finance and refinance the costs of parking structures and related facilities located at the Glenmont Metrorail Station located within the County (the "Glenmont Garage Project Bonds").

3. Section 24 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume) (the “State Refunding Act”) provides 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 revenue 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 State Refunding Act may be issued for public purposes which include realizing savings in the aggregate cost of debt service on either a direct comparison or present value basis.
4. By the terms of the State Refunding Act, the power to issue refunding bonds under the State Refunding Act is additional and supplemental to the County’s existing borrowing power.
5. Refunding bonds may be sold on a negotiated basis without solicitation of competitive bids if the County determines that the procedure is in the public interest.
6. Refunding bonds may be issued in one or more series, each series being in whatever principal amount the County determines to be required to achieve the purpose for the issuance of the refunding bonds, which amount may be in excess of the principal amount of the Metrorail Project Bonds.
7. The Director of Finance of the County (the “Director of Finance”) has recommended that all or a part of the Metrorail Project Bonds be refunded under the authority of the State Refunding Act in order to realize savings to the County in the aggregate cost of debt service on either a direct comparison or present value basis.
8. The Director of Finance has recommended that, in light of current market conditions, the County Executive of the County have the authority to determine whether the refunding bonds should be sold on a competitive basis following the solicitation of bids or on a private (negotiated) basis in order to achieve optimum savings to the County in the aggregate cost of debt service.

Action

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

Section 1. All capitalized terms used herein shall have the meanings given such terms in the Background section of this Resolution.

Section 2. The County is hereby authorized to issue, sell and deliver revenue bonds of the County, at one time or from time to time, and in one or more series, under the authority of Sections 5(P)(2) and 5(P)(3) of Article 25A of the Annotated Code of Maryland (2005 Replacement Volume and 2010 Supplement), Sections 20-47 through 20-54 of Chapter 20 of the

Montgomery County Code, and the State Refunding Act for the purpose of refunding all or a part of the County's outstanding Metrorail Project Bonds. Metrorail Project Bonds and any refunding bonds issued to refund the Glenmont Garage Project Bonds issued in accordance with this Resolution (collectively, "Refunding Bonds") may be issued in such amount as shall be sufficient (a) to purchase direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, the principal of and interest on which will be sufficient without reinvestment to pay in a timely manner all or any part of the principal of and redemption premium, if any, and interest on the Metrorail Project Bonds and, if so provided by order of the County Executive, a portion of the interest on such Refunding Bonds, (b) to fund a portion of a required debt service reserve fund with respect to the Refunding Bonds, and (c) to pay any and all other costs permitted to be paid from the proceeds of such Refunding Bonds under the State Refunding Act, including (without limitation) the costs of issuance of such Refunding Bonds and applicable underwriting fees.

Section 3. Refunding Bonds may be sold for a price at, above or below par, plus accrued interest to the date of delivery. Authority is hereby conferred on the County Executive to sell the Refunding Bonds through a public sale or through a private (negotiated) sale without solicitation of competitive bids, as the County Executive by executive order, upon consultation with the Director of Finance and the County's financial advisor, shall determine to be in the best interests of the County. Any sale of Refunding Bonds by private negotiation is hereby determined to be in the County's best interest.

Section 4. Refunding Bonds will be designated, dated, bear interest, be in such denominations, be payable at such times and at such places, mature in such amounts and on such dates, be subject to redemption prior to maturity, have such other provisions, be in such forms and be executed and sealed as the County Executive, in his sole and absolute discretion, determines, by executive order or otherwise. The execution and delivery of Refunding Bonds shall be conclusive evidence of the approval of the form of such Refunding Bonds on behalf of the County.

Section 5. The County Executive may, by executive order or otherwise, provide for the deposit of any proceeds from the Refunding Bonds in trust with a trust company or other banking institution and the investment of such proceeds in such manner as will provide for the payment when due of the principal of and premium (if any) and interest on the Metrorail Project Bonds with the proceeds of such Refunding Bonds, all in accordance with the provisions of the State Refunding Act.

Section 6. The County Executive, by executive order or otherwise, may pledge lease and any other payments under any facility lease agreements and other agreements relating to the Metrorail Garage Projects to the payment of the principal of, premium, if any, and interest on the Refunding Bonds. The Refunding Bonds shall not constitute a pledge of the full faith and credit and unlimited taxing power of the County.

Section 7 The County Executive may, by executive order or otherwise, specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents or procedures, including (without limitation) notices of sale, forms of

proposal, bond purchase agreements, escrow deposit agreements, trust agreements, and continuing disclosure agreements, as are necessary, proper or expedient to consummate the authorization, sale, security, issuance, delivery or payment of or for the Refunding Bonds.

Section 8. The State Refunding Act provides that refunding bonds may be issued thereunder by the County for certain public purposes specified therein, including realizing savings to the County in the aggregate cost of debt service on either a direct comparison or present value basis. The County is hereby authorized to borrow money and incur indebtedness evidenced by bonds or other obligations (“refunding bonds”) to refinance the Refunding Bonds. Such refunding bonds may be issued pursuant to this Resolution in an aggregate principal amount that exceeds the principal amount of the Refunding Bonds refinanced thereby in order to provide funds sufficient to purchase government obligations, the principal of and interest on which will be sufficient without reinvestment to pay in a timely manner all or any part of the principal of and premium, if any, and interest on the Refunding Bonds, to fund any reserve fund and to pay any and all costs of issuance of such refunding bonds and applicable underwriting or other fees. The issuance of such refunding bonds will effectuate and accomplish the public purpose of realizing savings to the County in the aggregate cost of debt service on a direct comparison or a present value basis. The County Executive is hereby authorized to determine the form of any such refunding bonds issued hereunder and the execution and delivery thereof shall be conclusive evidence of the approval of the form of such refunding bonds on behalf of the County. Such refunding bonds hereby authorized may be sold for a price at, above or below par, plus accrued interest to the date of delivery. Authority is hereby conferred on the County Executive to sell any such refunding bonds through a public sale or through a private (negotiated) sale, without solicitation of competitive bids, as the County Executive, upon consultation with the County Director of Finance and the County’s financial advisor, shall determine to be in the best interests of the County. Any sale of such refunding bonds by private negotiation is hereby determined to be for the County’s best interest. Such refunding bonds issued hereunder are hereby specifically exempted from the provisions of Sections 10 and 11 of Article 31 of the Annotated Code of Maryland.

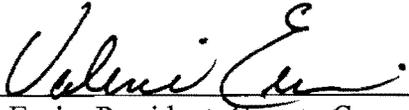
Section 9. The County hereby covenants that if it issues refunding bonds as tax-exempt obligations it will take, or refrain from taking, any and all actions necessary to comply with the provisions of Section 103 and Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended (the “Code”), applicable to the Refunding Bonds in order to preserve the excludability of the interest on the Refunding Bonds from gross income for Federal income tax purposes. Without limiting the generality of the preceding sentence, the County will (a) not use or permit the use of any of the proceeds of the Refunding Bonds in such manner as would cause the interest on the Refunding Bonds to be includable in gross income for Federal income tax purposes, (b) make periodic determinations of the rebate amount (if any) and timely pay any rebate amount, or installment thereof, to the United States of America, and (c) prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or any successor or additional form required by the Internal Revenue Service.

Section 10. In accordance with the provisions of Section 211 of the Charter of the County, the County Executive is hereby authorized to delegate to the Chief Administrative Officer the power

and authority to take any and all actions required or permitted to be taken by the County Executive pursuant to this Resolution.

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 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 action as may be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of certificates of the County, documents, elections, statements and reports pursuant to application provisions of the Code and the Treasury Regulations prescribed thereunder, subject to the limitations set forth in the State Refunding Act and this Resolution.

Section 12. This Resolution shall take effect upon approval of the President for the County Council.



Valerie Ervin, President, County Council

9/22/2011

Date

This is a correct copy of Council action:



Linda M. Lauer, Clerk of the Council