

March 4, 2008

Council Worksession

MEMORANDUM

February 28, 2008

TO: County Council

FROM: Justina J. Ferber, Legislative Analyst

SUBJECT: **Cost Sharing – PDF No. 720601
Adventist HealthCare Project – \$700,000
FY09-14 Capital Budget & Capital Improvements Program**

The Planning Housing and Economic Development Committee recommends (Councilmembers Elrich and Floreen in favor and Knapp temporarily absent) that the Council:

- **Disapprove EDF funding of \$700,000 for FY10 for the Adventist HealthCare medical building project in the Cost Sharing PDF.**
- **Approve a negative appropriation of \$1,400,000 in estimated FY08 EDF funding for the Adventist HealthCare medical building project in the Cost Sharing PDF.**
- **Encourage Adventist HealthCare to take this opportunity to reevaluate the medical building project and work with the community to develop a strategic plan to respond to the need for health care services in the Long Branch area in light of the relocation of Washington Adventist Hospital.**

Background

This project provides incentive funding in the form of a \$2,100,000 conditional grant to be disbursed over the course of three years to Adventist HealthCare to assist with the construction of its medical office building project at 8702 Flower Avenue in the Long Branch community. The property is currently a parking lot zoned C-1 in the Takoma Park-East Silver Spring Commercial Revitalization Overlay Zone and the medical building use conforms to the zoning. The Planning Board approved the site plan for the project in March 2007.

Project

Adventist HealthCare is proposing to construct an office building on Flower Avenue based on medical needs in the Long Branch community. Adventist HealthCare will not own the building but will have a 20-year lease with a 10-year renewal option. The facilities will be occupied partially by the hospital system with the remaining space to be subleased to doctors and other medical oriented businesses that will support community health care needs. Adventist HealthCare is reevaluating its use of space in the building.

The County is providing \$700,000 in each of FY07, FY08 and FY10 for a total commitment of \$2,100,000 in current revenue from the Economic Development Fund. The \$700,000 budget request will be scheduled for FY10 because of delays in the project. EDF funds will not be expended until there is an agreement between Adventist HealthCare, the property owner and the County Executive. The requirements will address the length and terms of the lease, public use of the garage, the use of the building for medical-oriented businesses, and other EDF requirements including fiscal analysis and job generation.

Adventist HealthCare plans to pay for this project through tenant rents over 20 years and has indicated that the rents collected will not sufficiently cover the cost of the building. The County's contribution of \$2,100,000 will help pay for the project.

Status

The project has been stalled in litigation and a court decision is expected in April 2008. Adventist HealthCare requested that the remaining \$700,000 be funded in FY09 to assure financing for the project. DED felt that placing the funding in the expenditure schedule for FY10 would not have an impact because construction on the project has been delayed. Should the project move forward more quickly than anticipated, DED can submit a request for a supplemental appropriation to move the expenditure to FY09.

Councilmembers should remember that the PDF stipulates that funds will not be expended from the Economic Development Fund for this project until there is a written agreement between the County and Adventist HealthCare. The PDF also states that DED, the property owner, and Adventist HealthCare will keep the Council informed of modifications to the project and the status of litigation.

Committee Discussion

The Committee was advised that the Adventist HealthCare project was in litigation in the Court of Special Appeals and had been delayed. Councilmember Trachtenberg was also in attendance and Councilmember Knapp was temporarily absent. Councilmembers noted that the real estate market changed considerably since the project was first proposed and suggested the \$2.1 million could be used for other County projects while AHC and the developer rethink the medical building project.

- **Committee members recommended the County encourage Adventist HealthCare and the developer to take this opportunity to reevaluate the project and that AHC work with the community to develop a strategic plan to respond to the need for health care services in the Long Branch area in light of the relocation of Washington Adventist Hospital.**
- **Committee members voted 2-0 to disapprove EDF funding of \$700,000 for FY10 for the Adventist HealthCare medical building project in the Cost Sharing PDF.**
- **Committee members voted 2-0 to approve a negative appropriation of \$1,400,000 in estimated FY08 EDF funding for the Adventist HealthCare medical building project in the Cost Sharing PDF.**

Attachments: Cost Sharing PDF – Adventist HealthCare Project PDF ©1

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Cost Sharing: MCG -- No. 720601

Category	Culture and Recreation	Date Last Modified	January 11, 2008
Subcategory	Recreation	Required Adequate Public Facility	No
Administering Agency	M-NCPPC	Relocation Impact	None.
Planning Area	Countywide	Status	On-going

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY07	Est. FY08	Total 6 Years	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	882	582	300	0	0	0	0	0	0	0	0
Land	0	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	4	4	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	7,394	0	3,144	4,250	3,550	700	0	0	0	0	0
Total	8,280	586	3,444	4,250	3,550	700	0	0	0	0	0

FUNDING SCHEDULE (\$000)

Short-Term Financing	3,850	0	300	3,550	3,550	0	0	0	0	0	0
Current Revenue: General	2,190	586	1,604	0	0	0	0	0	0	0	0
G.O. Bonds	140	0	140	0	0	0	0	0	0	0	0
Economic Development Fund	2,100	0	1,400	700	0	700	0	0	0	0	0
Total	8,280	586	3,444	4,250	3,550	700	0	0	0	0	0

DESCRIPTION

This project provides funds for the development of non-government projects in conjunction with public agencies or the private sector. County participation leverages private and other public funds for these facilities. Prior to disbursing funds, the relevant County department or agency and the private organization will develop a Memorandum of Understanding which specifies the requirements and responsibilities of each.

COST CHANGE

Increase represent County's contribution to match the State's funding for the music venue in Silver Spring.

JUSTIFICATION

The County has entered into or considered many public-private partnerships, which contribute to the excellence and diversity of facilities serving County residents.

OTHER

For FY09, County participation is anticipated for the following projects in these amounts:

Music venue in Silver Spring: \$3,550,000 (\$150,000 was expended out of the Economic Development Fund in FY07 for a feasibility study for a music venue, and \$300,000 will be expended in FY08, bringing the total County match to the State to \$4,000,000)

or FY10, County participation is anticipated for the following projects in these amounts:

Adventist HealthCare: \$700,000

Funds for the music venue in Silver Spring will not be expended until an agreement is reached between the development partners and the County, which includes Council review and approval of the general business terms. The County will own the facility and will fund its contribution with short-term financing proceeds consistent with the terms of the lease agreement with the operator of the music venue.

The Adventist HealthCare Project provides incentive funding to assist with the construction of a medical office building at 8702 Flower Avenue in the Long Branch community. With the announced departure of Washington Adventist Hospital from Takoma Park, construction of this site underscores the County's commitment to access to health care in the Long Branch area. As a part of a three year commitment, the County is providing \$700,000 in FY07, in FY08 and FY10 for a total of \$2.1 million in current revenue from the Economic Development Fund (EDF). The final \$700,000 payment was originally scheduled for FY09 but was deferred to FY10 due to a delay in the project. EDF funds will not be expended until there is an agreement between Adventist HealthCare, the property owner, and the County Executive which includes specific performance requirements. The requirements should address the length and terms of the lease; public use of the garage, the use of the building for medical-oriented businesses, and other EDF requirements including fiscal analysis and job generation. DED, the property owner, and Adventist HealthCare will keep the Council informed of modifications to the project and the status of litigation.

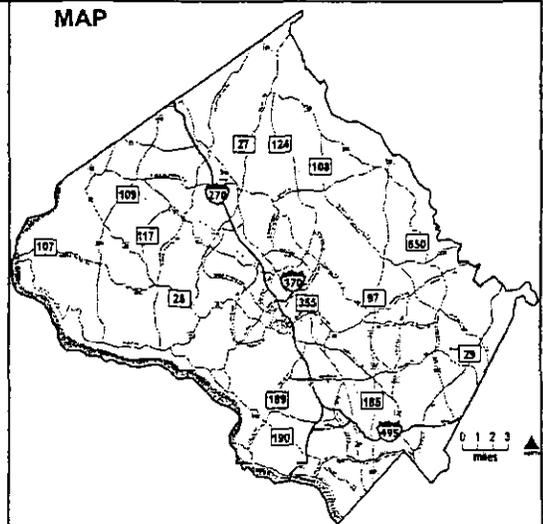
APPROPRIATION AND EXPENDITURE DATA

Date First Appropriation	FY06	(\$000)
First Cost Estimate		
Current Scope	FY08	6,280
Last FY's Cost Estimate		6,280
Appropriation Request	FY09	2,000
Appropriation Request Est.	FY10	700
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		5,440
Expenditures / Encumbrances		1,882
Unencumbered Balance		3,558
Partial Closeout Thru	FY06	0
New Partial Closeout	FY07	0
Total Partial Closeout		0

COORDINATION

Private organizations
 State of Maryland
 Municipalities
 Montgomery County Public Schools
 Community Use of Public Facilities

MAP



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March 4, 2008

Council Worksession

MEMORANDUM

February 29, 2008

TO: County Council

FROM: Justina J. Ferber, Legislative Analyst

SUBJECT: **Cost Sharing – PDF No. 720601**
Silver Spring Music Venue – \$2,000,000
FY09-14 Capital Budget & Capital Improvements Program

- **The Planning Housing and Economic Development Committee recommends (2 to 1) that the Council approve the \$2,000,000 appropriation for the Silver Spring Music Venue in the Cost Sharing PDF as submitted.**
- **The Committee requested that Executive staff submit Subdivision Regulation Amendments (SRA) and Zoning Text Amendments (ZTA) immediately.**

Silver Spring Music Venue – \$2,000,000

This project provides capital funding of an additional \$2,000,000 for the Silver Spring music venue project for FY09. The total County contribution to the project is \$4,000,000; \$2,000,000 was appropriated in the FY08 capital budget. The project provides for the J.C. Penney site at 8656 Colesville Road in Silver Spring to be converted into a Live Nation Fillmore brand entertainment venue. Lee Development Group will donate the land to the County and the County will own the concert hall. Live Nation will lease the hall from the County. The J.C. Penney facade is historic and will be maintained.

Status of the Feasibility Study

The Department of Economic Development advises that the feasibility study is almost complete. The feasibility study was modified which has delayed its completion.

Funding

The State bond bills authorize the creation of a state debt to serve as a grant to the County Executive and County Council for the construction, reconstruction, repair, renovation, and capital

equipping of the music hall located in Silver Spring. The bond bills require the County to provide matching funds of \$4,000,000. The remaining \$2,000,000 in state bond bills is in the Governor's FY09 budget.

Funding Sources

State of Maryland	\$4,000,000
Montgomery County	\$4,000,000
Live Nation	minimum \$2,000,000
Lee Development (land)	\$3,500,000
Including LDG contribution of development management	

Financing

Executive staff is exploring the appropriate financing vehicle for this project and the impact of the debt service costs will be reflected in the debt service budget included in the Operating Budget after financing is complete. The project financing may be long-term rather than the short-term as described in the PDF.

Process

Executive staff briefed the Council on the process used for decisions regarding the Live Nation agreement on January 29, 2008. At that time the Council reviewed the estimated financials for the project (see ©2). The lease agreement between the County and Live Nation and the summary of terms with Live Nation (see ©3) were also discussed.

Staff Review of Lease and Financials

Council Staff reviewed the lease and summary of financials and many questions were answered by Executive staff. Below are some issues staff highlighted for the Committee.

Rent schedule: Council staff believes that scheduled rent increases to be paid by Live Nation to the County are low. For instance, in 5 years the rent only increases \$562 a month and after 10 years only increases \$1167 a month for 10,800 s.f. of commercial space.

Executive staff has responded that given that the music venue will generate more net revenue to the County than the originally contemplated facility, the fact that the County investment does not increase and that the tenant will be investing significantly in the building, maintaining the same rent structure committed to original operator is reasonable. The footprint of the site remains the same and the amount of investment remains the same. It is important to note that where a landlord assumes responsibility for capital and ordinary maintenance and for tenant improvements, the rent charged would be higher to reflect that. These charges are not being incurred by the County and therefore, the rent is determined to be justified. The \$7,500 per month rent escalates every 5th year by 7.5% per escalation period. In addition, Live Nation is responsible for all additional rent payments (taxes, etc.) and all costs associated with operating and maintaining the facility.

Excess Construction Costs: The tenant will be responsible for excess construction costs and is entitled to a credit against fixed rent for those costs. **Council staff does wonder how low the rent can go.**

Executive staff states that the project will be value engineered and the County has made very clear that it will not fund cost overruns. While the County does not anticipate any overruns, if Live Nation covers such costs, it would receive a credit against the rent.

Revenues: Council staff believes that the County should share in revenues similar to its authority to share profits of other projects such as the Conference Center and AFI Silver Theatre (AFI has yet to make a profit).

Executive staff has responded that it is important to understand that every deal is different. In the case of the Fillmore, the County does not bear any responsibility for any operating, maintenance, or additional capital costs (after the facility has been constructed). The building is being leased to Live Nation, and they are financially liable for all costs and expenses. The conference center on the other hand, is being managed by Marriott in accord with the terms of a Management Agreement. In that case, the County is financially responsible for any operating losses associated with the building and ongoing capital improvements – there is more risk on the part of the County, as is the case with AFI, so there is also the opportunity for reward. The deal structure with Live Nation reflects the County’s intention to shift the risk associated with operating any such facility to the private sector.

Naming of the building: Council staff is not as confident about the County’s absolute approval of the building name as is Executive staff. Per the agreement, consent of the landlord shall not be unreasonably withheld unless the tenant proposes to include a name associated with an alcoholic beverage. The name must contain the words Fillmore and Silver Spring.

*Executive Staff states that the tenant does **not** have absolute naming rights of the building. Live Nation will operate the venue as a “Fillmore” branded venue and the name will include the words Fillmore and Silver Spring. If naming rights are invoked, any name will require the prior consent of the County, which the County must exercise reasonably. While any name including a word or symbol associated with an alcoholic beverage can be disapproved without explanation by the County. Nonetheless, if the County has a reasonable, valid objection to a name proposed by Live Nation, it may withhold its approval of such name.*

Financials: Council staff believes that the cost avoidance items included as “other revenues” in the summary of financials should not be included except for the tenant lease payment. Items included in the Cost Avoidance list are not normally cited as revenues. Exclusion of these items will decrease the projected rate of return on investment.

Executive staff stands by their financial summary.

Staff Discussion

The feasibility study for the music venue project has not been completed and there is no specific information on design of the facility or a proposed development agreement or guarantee from the state for another \$2,000,000 or on amendments to liquor licensing laws. The PDF has no description other than \$3,850,000 for Live Nation to be funded in the Economic Development Fund.

Staff believes the language in the PDF inserted by the Council last year should remain: "Funds for the music venue in Silver Spring will not be expended until an agreement is reached between the development partners and the County which includes Council review and approval of the general business terms."

The Live Nation deal is what it is. Staff recommended that the Committee approve the additional \$2,000,000 in the Cost Sharing PDF for the deal to move forward.

Committee Discussion February 19

Councilmembers Ervin and Trachtenberg joined the Committee discussion. Committee members expressed concern that the rent to be charged to the tenant was too low and market rent was not being charged in comparison to rents of other entertainment venues. Committee members also expressed concern about cost overruns and were assured that the project would be value engineered and that the County has made it clear that it will not fund any cost overruns. Committee Chair Elrich reiterated his view that the process was flawed.

Committee members were advised that not only were zoning text amendments (ZTA) required but a subdivision regulation amendment (SRA) was needed for the project. The Committee asked for Executive staff to submit the SRA and ZTA to the Council immediately. Councilmember Ervin stated that the State match would be in jeopardy without an appropriation from the County and that everything is moving in parallel; the State, County, and Planning Board. Councilmember Trachtenberg suggested that plans were needed to address parking policy and safety issues. Committee members agreed (3-0) to defer their recommendation in anticipation of the ZTA and SRA related to the Silver Spring Music Venue project.

Committee Discussion February 28

Committee members Floreen and Knapp agreed that the Committee should recommend approval of the \$2,000,000 appropriation for the Silver Spring Music Venue as submitted by the County Executive. They noted that the previous Committee discussion was to assure that the land use elements of the project were moving in tandem with the funding and that Executive Staff has assured Councilmembers that they are moving quickly on the land use pieces of the project.

Committee Chair Elrich voted against the recommendation for the appropriation. He felt that the project was not an economic development project as the venue will only be open 1 to 2 nights a week and will not provide the continuing economic stimulation needed by restaurants

and other services. He questioned the process used for the deal and was troubled by the low rent, possible cost overruns, lack of County share in naming rights and share in rental paid by other users.

- **The Planning Housing and Economic Development Committee recommends (2 to 1) that the Council approve the \$2,000,000 appropriation for the Silver Spring Music Venue in the Cost Sharing PDF as submitted.**
- **The Committee requested that Executive staff submit Subdivision Regulation Amendments (SRA) and Zoning Text Amendments (ZTA) immediately.**

Attachments: Cost Sharing PDF – Live Nation Project - \$2,000,000- ©1
Summary of Estimated Music Venue project Financials ©2
Summary of Live Nation Terms ©3

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Category	Culture and Recreation	Date Last Modified	January 11, 2008
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Construction	0	0	0	0	0	0	0	0	0	0	0
Other	7,394	0	3,144	4,250	3,550	700	0	0	0	0	0
Total	8,280	586	3,444	4,250	3,550	700	0	0	0	0	0

FUNDING SCHEDULE (\$000)

Short-Term Financing	3,850	0	300	3,550	3,550	0	0	0	0	0	0
Current Revenue: General	2,190	586	1,604	0	0	0	0	0	0	0	0
G.O. Bonds	140	0	140	0	0	0	0	0	0	0	0
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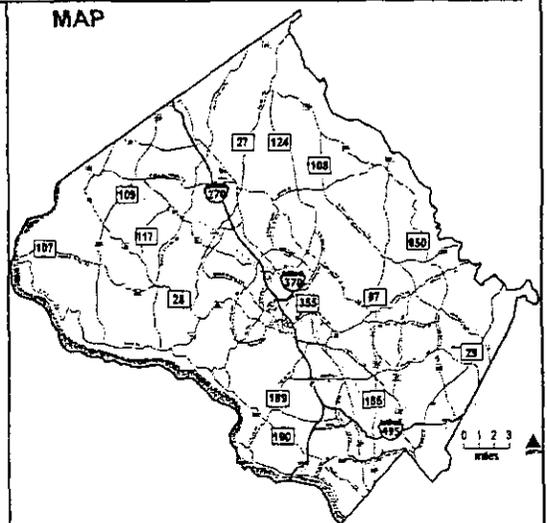
APPROPRIATION AND EXPENDITURE DATA

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Total Partial Closeout		0

COORDINATION

Private organizations
 State of Maryland
 Municipalities
 Montgomery County Public Schools
 Community Use of Public Facilities

MAP



Summary of Estimated Silver Spring Music Venue Project Financials

Information and Assumptions	
Current (FY08) Assessed Value of the Land	\$3,885,900
County Share of Capital Improvements	\$4,000,000
State Share of Capital Improvements	\$4,000,000
Estimated Assessed Value after Capital Improvements ¹	\$9,000,000
Equipment Installed at Tenant's Cost (Personal Property)	\$2,000,000
Estimated Real Property Tax Rate (per \$100 AV)	\$ 1.332
Estimated Personal Property Tax Rate (per \$100 AV)	\$2.669
Estimated Number of New Jobs in Montgomery County	30
Estimated Average Annual Salary of the New Jobs	\$45,000
Tenant's Annual Lease Payment to the County	\$100,641
Capital Cost (over 20 Years)	
Amount Financed	\$8,000,000
Estimated Interest Rate	7.0%
Term (Years)	20
Total Cost over 20 Years	\$15,102,868
Principal	\$8,000,000
Interest	\$7,102,868
ANNUAL Carrying Cost (Average Annual Interest Cost)	\$355,143
State Share of Carrying Cost (rounded)	\$177,572
County Share of Carrying Cost (rounded)	\$177,572
Revenues (Annual)	
STATE TAXES	
State Annual Income Tax ²	\$123,495
State Retail Sales & Use Tax ²	\$633,567
State Real Property Tax ²	\$24,500
State Alcoholic Beverages Taxes ²	\$11,251
State Tax Revenues	\$792,813
COUNTY TAXES	
County Real Property Tax (net of tax credits, avg for 20 years)	\$73,768
County Personal Property Taxes	\$53,380
County Income Tax	\$26,199
County Fuel-Energy Tax	\$7,735
County - Other Revenues	\$12,769
County Tax Revenues	\$173,851
OTHER COUNTY REVENUES/COST AVOIDANCE	
Tenant Fit-out	\$188,786
Tenant-Paid Maintenance	\$186,870
Tenant-Paid Utilities	\$211,048
Major Systems Replacement Reserve Fund	\$125,000
Celebrate Silver Spring Payment	\$30,000
County Use of Facility (Free of Charge)	\$48,367
Community Use of Facility (Discounted Charge)	\$132,060
Complimentary Tickets	\$28,214
County - Tenant's Annual Lease Payment	\$100,641
Other County Revenues	\$1,050,984
ANNUAL Revenues	\$2,017,649
Net Effect on Annual State Revenues (Taxes LESS Carrying Cost)	\$615,242
Net Effect on Annual County Tax Revenues (Taxes LESS Carrying Cost)	-\$3,720
Net Effect on Annual State and County Revenues (Revenues LESS Carrying Cost)	
	\$1,662,506
State Rate of Return on Investment (MIRR) - (All Revenues)	9.9%
County Rate of Return on Investment (MIRR) - (TAXES ONLY)	-1.8%
County Rate of Return on Investment (MIRR) - (All Revenues)	11.4%
Combined State and County Rate of Return on Investment (MIRR)	
	11.2%

¹ Only 25% of the Current (FY08) Land amount will be used.

² State revenues (except for alcoholic beverages taxes) used are RAM outputs (Maryland Tourism) for the Direct and Indirect impact of the original project at this site.

Note: County Revenues per the Economic Development Fund Fiscal Impact Model, except:
 (a) Personal Property Taxes based on current tax rate and Live Nation's equipment cost
 (b) Real Property Taxes are net of Arts & Entertainment District, Enterprise Zone and Parking Lot District Tax Credits for which the property may be eligible.

LIVE NATION TERMS

Investments:

- Property -- developer at estimated \$3.5 Million (plus developer is contributing development management)
- State -- \$4 Million
- County -- \$4 Million
- Live Nation – minimum of \$2 Million

Maintenance: Live Nation operational and capital maintenance

Taxes: Live Nation

Rent: \$90,000/year net w/periodic escalation

Term: 20 years w/2 five year renewal options

Use: First-class live entertainment venue

Add'l. Fiscal benefits:

- annual \$30,000 payment to Celebrate Silver Spring which provides programming and events in downtown Silver Spring.
- guaranteed a minimum of 36 free and heavily subsidized County and Community uses of the facility each year.
 - The County is assured of three free facility uses
 - three free charitable uses
 - 20 community uses at 20% of facility market rate not to exceed \$3000/use for the life of the lease
 - 10 community uses at 40% of facility market rate not to exceed \$3000/use for the life of the lease.
 - Each community or county use beyond the 36 uses will be at \$3000/use (compared with facility market rate which is expected to be more)
- 6 complementary tickets to each Event
- an annual auction to be conducted and sponsored by Live Nation at which it will sell autographed memorabilia from each event that it puts on. The proceeds from the auction will go to a charitable purpose identified by the County. This annual auction is expected to be quite successful because it draws upon Live Nation's experience and expertise at putting on fund raising events. It has successfully produced programs such as Live Earth concerts in New York, London, Washington, DC, Shanghai, and Hamburg, the Concert for Diana, the Paul Simon Library of Congress Concert, the recent Virginia Tech benefit concert and the Pray for Peace concert at Washington Cathedral in October.
- The music venue will be a Fillmore brand which has enjoyed success in cities such as Miami, New York City, San Francisco, Philadelphia and Detroit. Live Nation has recognized booking power to attract and program quality acts at the venue.

Add'l terms:

- Events will conclude by 1 am and alcohol sales will stop 1 hour prior
- County will own the facility and tenant build-out except for equipment at end of term
- Minimum of 70 Events/year with objective of 150 Events/year
- Booking policy at venue – "Tenant covenants and agrees to book Events each calendar year that are balanced so as to ensure a reasonably proportioned blend of cultural experiences including varied types of music and other live performances appealing to the varied tastes of the population including, without limitation, popular, rock and roll, Latin, blues, soul, jazz, folk, and country music."