

MEMORANDUM

May 13, 2010

TO: County Council

FROM: Minna K. Davidson, Legislative Analyst 

SUBJECT: FY11-16 CIP: Cost Sharing: MCG - Arts Facility Financing, Olney Theatre

Project Summary and HHS Committee Recommendations

Project Summary: The Executive's January 15 CIP included a total of \$9 million (\$1.5 million in each of six years) for arts facility financing in the Cost Sharing project. The source of funds was a mix of Current Revenue and GO bonds. The Executive did not specify the potential recipients or a process to identify them. The HHS Committee Chair deferred a review of this funding until more specific information was available.

In March, the Executive transmitted an amended Cost Sharing PDF (© 5-6) which specified that of the \$1.5 million for arts facility financing in FY11, \$500,000 was for Olney Theatre, and \$600,000 was for the Old Blair Auditorium. An additional \$400,000 was not allocated for a particular arts facility.

HHS Committee Recommendations: The Health and Human Services (HHS) reviewed the Executive's amended PDF on April 21, and recommends the following. (All recommendations are 2-0, Councilmember Navarro absent)

For FY11:

- **Do not approve \$600,000 for the Old Blair Auditorium.** (The Council has tentatively approved funding for the Old Blair Auditorium in a separate, stand-alone project.)
- **Do not approve \$500,000 for Olney Theatre at this time.** If the Finance Department, AHCMC, and Olney Theatre develop other options, the Committee would consider them.
- **Do not approve \$400,000 for unspecified arts facility financing.**

For FY12-16:

- **Do not approve \$1.5 million per year for arts facility financing for FY12-16.**

Summary of HHS Committee Discussion

Use of General Obligation (GO) bonds for private projects: The Committee discussed this issue extensively during its review of the community grants recommended for funding in the Cost Sharing project (Agenda Item #2 on May 17). The Finance Director said that the County's bond counsel believed it would be possible to use GO bond funding for private projects under the tax laws, but had recently determined that in most cases (including Olney Theatre) it would not be possible under the narrow definition of public facilities in County Code Chapter 20. She noted that this situation could be addressed by amending County law.

Councilmember Leventhal did not support the use of GO bond funding for private projects. He felt that generally it would not be good policy for the County to borrow money to support private projects, and it is especially inadvisable at a time when the County is significantly reducing its own budget and programs. He indicated that he would not support legislation to permit the use of GO bond funding for non-County entities.

Councilmember Trachtenberg was not opposed to the use of GO bond funding for private projects, and felt that it might be appropriate under the current fiscal pressures to consider GO bond funding as a means to assist organizations that support vulnerable individuals in the community. She requested information on State of Maryland criteria and practices for bond bills for nonprofit capital projects, and whether other jurisdictions use GO bonds to fund nonprofit capital projects. The additional information is provided in the packet for Agenda Item #2.

Olney Theatre: Committee members were concerned that even though Olney Theatre has recently stepped up its fundraising and budget management efforts, the Theatre still has not provided a strategic plan to address its fiscal situation. In addition, Committee members were concerned that Olney Theatre has not provided certain audit statements required by the Arts and Humanities Council. Until the Theatre provides a strategic plan and meets its audit requirements, they felt it would not be responsible to provide County funding to the Theatre.

The Finance Director said that she agreed that the Olney Theatre needs to develop a plan for its long term financial health, and that the Arts and Humanities Council had agreed to help the Theatre to develop a plan. The Arts and Humanities Council's CEO said that, while she would be willing to serve as a business consultant for the Olney Theatre, she remains concerned that development of a long term strategic plan is a long process, and Olney Theatre needs to address its fiscal issues right away. She suggested that the Theatre needs to produce a short term strategy with specific steps to address the fiscal situation as quickly as possible.

The Finance Director discussed other funding possibilities, such as conduit bonds which provide nonprofit organizations access to tax exempt bonds which the organizations repay, or Recovery Zone Facility Bonds which were established under the American Recovery and Reinvestment Act. She said that Recovery Zone Facility Bonds are intended for private organizations and do not carry the usual governmental requirements for tax exempt debt. These

bonds would require debt service in the County's budget, but it would be possible to develop a financial plan in which Olney Theatre would repay the County for the debt over time.

Because the major issues - identifying a viable funding source (as GO bonds cannot be used without a change in law), and the need for Olney Theatre to provide a financial plan and meet the Arts and Humanities Council's audit requirements – had not yet been resolved, the Committee recommended against the \$500,000 for the Olney Theatre for the time being. The Committee agreed that if the Finance Department, Arts and Humanities Council, and Olney Theatre develop other options, the Committee would be willing to consider them.

The Committee did not support the other elements of the Executive's proposal, including the \$400,000 for unspecified use in FY11, and the \$1.5 million per year scheduled for FY12-16.

The April 21 Committee packet is on © 1-10.

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MEMORANDUM

April 19, 2010

TO: Health and Human Services Committee
FROM: *MKD*
Minna K. Davidson, Legislative Analyst
SUBJECT: FY11-16 CIP: Cost Sharing: MCG - Arts Facility Financing

Original CE Recommendation

In his January 15 CIP, the Executive recommended a total of \$9 million (\$1.5 million in each of six years) for arts facility financing in the Cost Sharing project. The source of funds was a mix of Current Revenue and GO bonds as shown in the following table.

	FY11	FY12	FY13	FY14	FY15	FY16
Current Rev.	0	250	500	500	500	500
GO Bonds	1,500	1,250	1,000	1,000	1,000	1,000
Total	1,500	1,500	1,500	1,500	1,500	1,500

The Executive did not specify who the potential recipients might be, or how they would be identified. **The HHS Committee Chair deferred a review of this funding until the Executive provided more information about how the money would be spent, and the basis for assuming that GO bonds can be used to fund private capital projects.**

Amended CE Recommendation in March

In March, the Executive transmitted an amended Cost Sharing PDF (© 1-2) which specified that of the \$1.5 million for arts facility financing in FY11, \$500,000 was to be for Olney Theatre, and \$600,000 was to be for the Old Blair Auditorium. This left an additional \$400,000 that was not allocated for a particular arts facility. In addition, the Executive added

\$450,000 (\$300,000 in GO bonds and \$150,000 in current revenue) for certain community facility projects which are included in Item #3 on the agenda.

The recommended expenditures in FY11 break out as follows:

Project	Cost	GO Bonds	Cur. Rev.
Old Blair Auditorium	600,000	600,000	
Olney Theatre	500,000	500,000	
Unspecified arts facility	400,000	400,000	
Community facilities	450,000	300,000	150,000
Total	1,950,000	1,800,000	150,000

The recommended funding sources for the six years in the amended PDF break out as follows:

	FY11	FY12	FY13	FY14	FY15	FY16
Current Rev.	150	250	500	500	500	500
GO Bonds	1,800	1,250	1,000	1,000	1,000	1,000
Total	1,950	1,500	1,500	1,500	1,500	1,500

HHS Committee Review

Issues for Committee review are as follows:

FY11

1. **\$600,000 for Old Blair Auditorium:** On April 16, the HHS and Education Committees jointly reviewed the Executive's recommendation for Old Blair Auditorium. They recommended funding Old Blair as a separate, stand-alone project in the Montgomery County Government CIP which will be managed by MCPS. Council and OMB staff are developing a new PDF to reflect the joint Committees' recommendations. The Committees are scheduled to review the draft PDF on April 30. **In view of this recommendation, funds for the Old Blair Auditorium should be deleted from the Cost Sharing project.**
2. **\$500,000 for Olney Theatre:** The Olney Theatre is at a fiscal crossroads. The Committee has heard in closed session about the specifics of the situation. The Executive's recommended \$500,000 would help in the short term, but the Olney Theatre will also need a long term plan to address the situation.

The Executive has recommended funding the contribution to the Olney Theatre with GO bonds. Formerly the policy was that only County-owned facilities could be funded with GO bonds. The Committee has asked for written clarification on whether a private capital project can be funded with GO bonds, but has not received it so far.

Council staff's understanding at this point is that IRS rules probably permit the use of GO bonds to fund private capital projects, but County law may not. Code Section 21-14 defines the types of facilities that can be funded with GO bonds (© 3-4). Section 21-14(c) provides for the use of GO bonds for general types of County facilities. Council staff understands that Bond Counsel's review is focusing on this section.

Council staff would note that using bond funding as a source for grants to private organizations would commit the County to pay not only the principal, but also the debt service over the term of the bond. Department of Finance staff estimate that for a \$500,000 grant to the Olney Theatre, the County would pay an additional \$300,000 in interest over time.

The Committee requested that Olney Theatre staff meet with staff from the Department of Finance and the Arts and Humanities Council to develop advice on this matter. **For the April 21 worksession, representatives from the Department of Finance will be prepared to provide an update on the GO bond question and the status of their discussions with the Olney Theatre and the Arts and Humanities Council.** Olney Theatre staff have provided an update on the Theatre's fundraising efforts on © 5-6.

3. **\$400,000 for unspecified arts facility financing:** The Executive has recommended an additional \$400,000 in GO bond funding for arts facility financing, but has not recommended a particular organization to receive the funding. **Council staff recommends against approving this funding, especially since it is unclear whether GO bonds can be used to finance private capital projects.**

FY12 –FY16

The Executive recommended \$1.5 million in each year for arts facility financing to be funded by a mix of current revenue and GO bonds, as shown in the table on page 2 of this memo. While the Executive did not provide a written rationale for this recommendation, Council staff has gotten the sense that it was intended to anticipate arts and humanities organizations' facilities needs – either because they need financial assistance or because they need bond bill matches.

Council staff does not support this funding for several reasons:

- It is unclear whether GO bond funding (the funding source for most of the project) can be used to fund private capital projects. Even if, technically, GO bond funding can be used for that purpose, there would be a major policy question about whether the County should move in that direction.
- There is no information about which organizations would receive funding in these years, or how the organizations would be selected for funding.

- Making funding available for organizations in distress would benefit organizations that have had difficulties managing their finances, but would not recognize organizations that have managed well. In addition, making funding available for arts facilities financing would seem to favor organizations with facilities, while leaving organizations without facilities without any additional avenues for assistance.
- Setting aside funding for arts facilities, but not for other nonprofits' facilities, might raise equity issues among nonprofits.

Council staff recommendation: Do not fund \$1.5 million per year in FY12-16 for arts facilities financing.

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Cost Sharing: MCG -- No. 720601

Category
Subcategory
Administering Agency
Planning Area

Culture and Recreation
Recreation
Recreation
Countywide

Date Last Modified
Required Adequate Public Facility
Relocation Impact
Status

March 16, 2010
No
None.
On-going

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	0	0	0	0	0	0	0	0	0	0	0
Land	0	0	0	0	0	0	0	0	0	0	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	21,943	3,171	5,172	13,600	6,100	1,500	1,500	1,500	1,500	1,500	0
Total	21,943	3,171	5,172	13,600	6,100	1,500	1,500	1,500	1,500	1,500	0

FUNDING SCHEDULE (\$000)

Contributions	150	0	0	150	150	0	0	0	0	0	0
Current Revenue: General	6,753	3,171	1,182	2,400	150	250	500	500	500	500	0
G.O. Bonds	7,190	0	140	7,050	1,800	1,250	1,000	1,000	1,000	1,000	0
Long-Term Financing	3,850	0	3,850	0	0	0	0	0	0	0	0
State Aid	4,000	0	0	4,000	4,000	0	0	0	0	0	0
Total	21,943	3,171	5,172	13,600	6,100	1,500	1,500	1,500	1,500	1,500	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. In FY11-16, this project provides for \$1.5 million per year in Arts Facilities financing to ensure an available source of funding for capital improvements for County arts organizations.

COST CHANGE

Increase due to the addition of Arts facility financing for Old Blair Auditorium Project, Inc., Olney Theatre, and the County's participation in CHI Center, Inc., Ivymount School, Inc., Girl Scout Council of the Nation's Capital, Jewish Foundation for Group Homes, Inc., and State Aid 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

Economic Development:

The State approved \$4,000,000 in State Aid for the music venue in Silver Spring. The County's required match is \$4,000,000 and \$3,850,000 is currently programmed. The Venue Operator has agreed to purchase certain furniture, fixtures, and equipment for the project; \$150,000 of which will be used as the required County match. An agreement between the development partners and the County has been executed. The project is currently in the design phase. Necessary land-use approvals will be sought, after which time the project will move into the construction phase.

Grants:

For FY09, County participation was for the following projects:

Aunt Hattie's Place, Inc.: \$250,000

Boys and Girls Club of Greater Washington: \$250,000

CASA de Maryland, Inc.: \$150,000

CHI Centers: \$50,000

Institute for Family Development Inc., doing business as Centro Familia: \$75,000. The organization must demonstrate to the County's satisfaction that it has commitments for the entire funding needed to construct the project before the \$75,000 in County funds can be spent.

Jewish Council for the Aging of Greater Washington, Inc.: \$250,000

Montgomery General Hospital: \$500,000

Nonprofit Village, Inc.: \$200,000, and

YMCA of Metropolitan Washington and Youth and Family Services Branch: \$200,000

For FY10, County participation was for the following projects:

Aunt Hattie's Place, Inc.: \$100,000. Disbursement of FY09 and FY10 County funds is conditioned on the owner of the property giving the County an

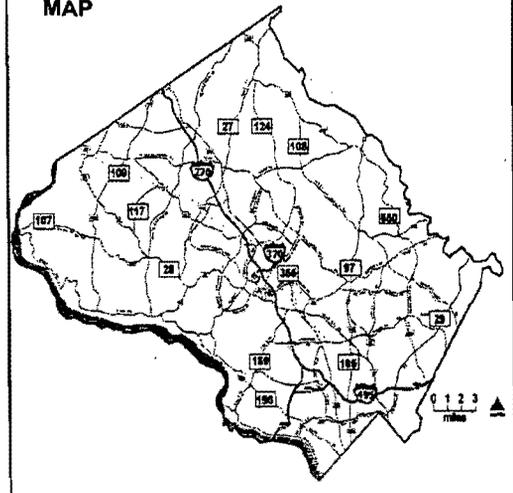
APPROPRIATION AND EXPENDITURE DATA

Date First Appropriation	FY06	(\$000)
First Cost Estimate	FY11	21,643
Current Scope		
Last FY's Cost Estimate		8,343
Appropriation Request	FY11	6,100
Appropriation Request Est.	FY12	1,500
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		8,203
Expenditures / Encumbrances		4,145
Unencumbered Balance		4,058
Partial Closeout Thru	FY08	0
New Partial Closeout	FY09	0
Total Partial Closeout		0

COORDINATION

Private organizations
State of Maryland
Municipalities
Montgomery County Public Schools
Community Use of Public Facilities
Department of General Services
Department of Economic Development

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Cost Sharing: MCG -- No. 720601 (continued)

appropriate covenant restricting the use of the leased property to a foster home for boys for a period of ten years from the time the facility commences to operate as a foster home.

Boys and Girls Club of Greater Washington: \$38,000

CASA de Maryland, Inc.: \$100,000

Jewish Council for the Aging of Greater Washington, Inc.: \$50,000, and

Warren Historic Site Committee, Inc.: \$150,000.

For FY11, County participation is anticipated for the following projects:

CHI Centers: \$200,000 (G.O. Bond)

Girl Scout Council of the Nation's Capital: \$100,000 (Current Revenue)

Jewish Foundation for Group Homes, Inc.: \$50,000 (Current Revenue)

Ivymount School, Inc.: \$100,000 (G.O. Bond)

Oiney Theatre: \$500,000 (Arts Facility Financing - G.O. Bond), and

Old Blair Auditorium Project, Inc.: \$600,000 (Arts Facility Financing - G.O. Bond). To provide matching funds to assist with rehabilitation/maintenance to prevent further deterioration in the former Elizabeth Stickley Auditorium.

The Old Blair Auditorium Project (a private, non-profit organization) received State bond bill funding of \$600,000 for the renovation of the Old Blair High School Auditorium. In FY06-07 the County provided \$190,000 as a partial match for the State funds with \$50,000 in current revenue for DPWT to develop a Program of Requirements and cost estimate for the project, and bond funded expenditure of \$140,000 to pay for part of the construction. The Council will consider appropriating the \$140,000 after: a) facility planning is complete and the full cost of the renovation is known; b) the County, MCPS, and the Old Blair Auditorium Project resolve issues about management of the renovation project, operation of the facility, and parking for the facility; and c) the Old Blair High School Auditorium project raises the remaining \$410,000 required to match the State funding. MCPS has included funds for a feasibility study for the auditorium in its Facility Planning project (No. 966553). During the study, MCPS will work with the community to develop a new program of requirements for the auditorium.

OTHER DISCLOSURES

- A pedestrian impact analysis will be performed during design or is in progress.

- The Executive asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

Article IV. Financing Public Facilities Generally.

Sec. 20-14. Definition of "public facilities."

As used herein, the term "public facilities" shall mean the following:

(a) The construction, reconstruction, improvement, extension, alteration, repair, purchase, conversion and modernization of public school buildings or buildings for school purposes, including the sites therefor, the cost of acquiring any such buildings or sites, architectural and engineering services, including preparation of plans, drawings and specifications for such schools or the conversion or modernization thereof and the development of the grounds, and all customary permanent appurtenances and recreational and pedagogical equipment for such schools;

(b) The construction, improvement, repair, opening, relocation, grading, resurfacing, widening, extension and drainage of all public roads, streets, highways and sidewalks in the county now or hereafter maintained and operated by or under the jurisdiction of the county, including the acquisition of necessary rights-of-way, the acquisition of equipment for highway construction, maintenance and repair and planning and engineering services; the planning, design, construction and reconstruction of free bridges constituting parts of such roads, streets or highways; the planning, construction, repair and permanent improvement of any storm water drainage systems necessary in the county;

(c) The construction, reconstruction, extension, acquisition, improvement, enlargement, alteration, repair and modernization of any structures to house any of the functions of or for the use of the county government or administration, especially health clinics, rescue squads, fire engine houses and police stations, airports and landing fields, parks and recreational facilities, or any combination of the foregoing, including the acquisition and development of sites therefor, the architectural and engineering services incident thereto and the acquisition and installation of necessary furnishings, fire fighting and rescue squad equipment and fixed permanent equipment therefor;

(d) The construction, reconstruction, improvement, extension, enlargement, alteration, conversion, modernization, repair, relocation, grading, resurfacing, widening, draining, and acquisition (including the preparation of plans, architectural and engineering services) of transit facilities which are defined to be all those matters and things utilized in rendering mass transit service by means of rail, bus, water or air and any other mode of travel, including without limitation, tracks, rights-of-way, bridges, tunnels, subways, rolling stock for rail, motor vehicle, marine and air transportation, stations, terminals and ports, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of mass transit service; and any part of the county's share of contributions agreed to be made under any contracts or agreements by the Washington Suburban Transit District to the capital required for the construction or acquisition of transit facilities (as defined in this subsection or as may be defined in chapter 870 of the Laws of Maryland of 1965, as the same may be amended from time to time) in the Washington metropolitan area, as provided by chapter 870 of the Laws of Maryland of 1965, as amended from time to time;

(e) The construction, reconstruction, improvement, extension, acquisition, enlargement, alteration, repair, modernization, relocation, grading, resurfacing, widening and drainage of off-street parking lots and facilities for the parking of automobiles and other vehicles, within and for the parking lot districts heretofore or hereafter established by law as the same are described in section 60-1 of the Montgomery County Code as amended from time to time, including the acquisition and development of sites therefor, the architectural and engineering services incident thereto and the acquisition and installation of necessary furnishings and fixed permanent equipment therefor;

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(f) The planning, acquisition, construction, improvement, repair and extension of facilities, including the sites therefor, for public housing or housing for persons of low, moderate or eligible incomes, as defined pursuant to law;

(g) The planning, acquisition, construction, improvement, repair and extension of water systems and facilities and sewerage systems and facilities. (Mont. Co. Code 1965, § 2-111; 1968 L.M.C., Ex. Sess., ch. 2 § 1; 1971 L.M.C., ch. 23, § 1; 1974 L.M.C., ch. 39, § 1; 1975 L.M.C., ch. 13, § 1; 1975 L.M.C., ch. 16, § 1.)

Editor's note—The Washington Suburban Transit District Act is contained in Appendix N to this Code.

Sec. 20-15. Borrowing money and issuing bonds-Authority.

With regard to any County borrowing authorized bylaw on the full faith and credit of the County to finance the public facilities defined in the preceding section, the County must evidence that borrowing or indebtedness by the issuance of its general obligation serial maturity bonds. Subject to the terms and conditions in this Section, the County Executive must determine the terms and conditions of any such bonds, the interest payable thereon and the advertising for their sale. Any such bonds may be issued under the authority of this division and for the purposes enumerated in the preceding section at any time, within the limitations provided by law.

All action taken pursuant to this Article must be taken by order of the County Executive. The County Executive must cause a correct copy of every such order to be filed with the Clerk of the County Council, who must keep a permanent record of all of such orders; and certification by the Clerk is evidence of the authenticity of any such order. (Mont. Co. Code 1965, § 2-112; 1971 L.M.C., ch. 23, § 2; 1998 L.M.C., ch 24, § 1.)

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MEMO – via email

April 19, 2010

To: The Montgomery County HHS Committee
Councilmember George Leventhal
Councilmember Nancy Navarro
Councilmember Duchy Trachtenberg

From: Amy Marshall, Managing Director
OLNEY THEATRE CENTER – 301-924-4485, extension 129.

Re: Fundraising Efforts at Olney Theatre Center

Thank you so much for all that you have done, not only for non-profit arts groups like Olney, but for all of Montgomery County through your efforts and service. Thank you also for the opportunity to explain the work that my staff and I have been doing to raise the dollars needed to sustain this great 71 year-old arts organization with the help of my Artistic Director, Jim Petosa and Olney Theatre Center's Board of Directors.

As of today, Olney Theatre Center has raised a total of \$748,013 in cash and pledges in 2010; representing not only the largest first quarter earnings in the history of the theatre but also a 168% increase over the same time last year. Olney is currently on track to make a contributed income goal of \$2 million dollars this year. These figures have been realized in spite of decreases in government funding, a decline in foundation support from "off-cycle" grantors and the ending of a multi-year pledge from the Kresge Foundation (last payment was in the spring of 2008).

As of April 2010, Olney has secured a:

- Multi-year pledge of \$100,000 from the Multz-Gudelsky Family Foundation (\$34,000 received April 13th).
- \$25,000 matching gift from Roberts Oxygen/Roberts Home Medical. In addition, Mr. Roberts is considering a multi-year gift in the amount of \$150,000.
- \$150,000 Bond Bill for capitalization expense reduction from the State of Maryland (2009). \$37,000 was paid to Olney April 17th. An additional \$88,000 payment is expected within the next two-weeks.
- \$50,000 matching gift from an anonymous donor in February 2010. The \$50,000 match was completed with private donations from individuals.
- \$200,000 cash gift from Robert Dohmen and the Dohmen Family Foundation has been received since the beginning of the year.

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- \$15,000 grant from the NEA for the first time in its history.

In addition to these completed efforts Olney Theatre Center has submitted proposals to several other organizations for leadership gifts to help in this campaign including:

- The Dohmen Family Foundation - \$500,000 multi-year commitment.
- The Morris and Gwendolyn Cafritz Foundation - \$300,000 one-time capital gift, and a second gift of \$75,000 for annual operations.
- The Kresge Foundation - \$150,000 one time capital redevelopment gift.

Olney Theatre Center received significant financial support from the following donors, who have been the cornerstone of the County for many years: Carol Trawick, Marilyn Mead, Tony and Connie Morella, Frances Hughes Glendening, Alan Meltzer and the Meltzer Group, the Sami & Annie Totah Family Foundation, Maggi Root, Reba Heyman, Mita Schaffer and Tina Martin.

Alongside continuing efforts to increase revenue, a restructuring of Olney Theatre Center's budget including production expense reductions, programming changes, and personnel consolidation resulted in a working budget of 4.2 million dollars for 2010; approximately one million dollars less than previous years.

Although Olney Theatre Center has made considerable progress and will continue working to find new and increased revenue sources, we do appreciate the consideration of a one-time \$500,000 special grant to help us meet our obligations with EagleBank.

The entire company is grateful and thankful to the members of the Council and Montgomery County for the continued belief in Olney Theatre Center and its value to not only this community but the entire State of Maryland and beyond.