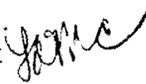


MEMORANDUM

October 10, 2014

TO: Health and Human Services Committee
Government Operations and Fiscal Policy Committee

FROM: Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Property Disposition – Declaration of No Further Need for Space in the New Silver Spring Library (Proposed Lease to Pyramid Atlantic)**

Expected for this session:

Greg Ossont, Department of General Services
Bruce Johnston, Department of Transportation

On March 25, 2014 the County Council received Executive Order 53-14, Disposition of space through lease agreement in the new Silver Spring Library, intersection of Wayne Avenue and Fenton Street, Silver Spring, Maryland (© 7-9). This is the County Executive's recommended Declaration of No Further Need (DNFN). Under the property disposition process, the Council must act or extend time for action on a DNFN within 60 days of receiving it or it is automatically approved. The Council President must inform the Executive within 30 days of receiving the DNFN if the Council intends to extend the time for consideration. On July 22, 2014 the Council extended its time for action until December 31, 2014 (© 5-6).

Attached at © 1-3 is an update from Assistant Chief Administrative Officer Bell-Pearson on the disposition of space in the new Silver Spring Library and the related negotiation for right-of-way at the current Pyramid Atlantic site on Ripley Street. The right-of-way is needed to make planned improvements to Ripley Street and the adjacent sidewalks.

Council staff suggests the joint Committee discuss these issues in the following order:

1. Right-of-way for Ripley Street Improvements
2. Material terms for the disposition of the space in the new Silver Spring Library
3. Waiving the requirement for a full market value transaction
4. Waiving the public hearing

1. Right-of-Way for Ripley Street

The FY15 Approved PDF for the Ripley Street project is attached at © 4.

In April, the joint Committee did not agree with the Executive's position that the right-of-way and lease/property disposition are separate. Since the last meeting, Executive staff entered into negotiations for the right-of-way. **The October 8, 2014 update to the joint Committee says:**

“While Maisel Development was willing to dedicate the 20 square feet needed for the road project, their valuation of the building that the County would have an obligation to restore after the right of way is taken far exceeded the appraisal price assessed by the County appraisal...Executive staff has discontinued negotiations with Maisel Development and will not pursue an further attempts to obtain right of way for the Ripley Street project.”

Mr. Johnston, Department of Transportation, will review with the joint Committee the original plans for the Ripley Street improvements and the Executive's new proposal to make limited improvements that do not require additional right-of-way. This new plan can be implemented with the funding that has been approved in the CIP.

The joint Committee will need to make a recommendation to the Council whether to:

1. Concur with the Executive that negotiations are concluded for the right-of-way for the originally planned Ripley Street improvements and the new option should proceed.
2. Reject the revised plan and recommend that the Executive proceed with condemnation.

If the joint Committee recommends that the new option proceed, Council staff will work with OMB to determine if a CIP amendment is needed (as the PDF specifies the right-of-way).

The update memo says that if any property owner decides in the future to redevelop the 8230 Georgia Avenue building they will be required to dedicate property before any development plans can be approved by the Planning Board.

2. Material Terms for the Disposition of Space in the New Silver Spring Library

A. Background

On October 7, 2013, the Executive transmitted the material terms for leasing space in the new Silver Spring Library to Pyramid Atlantic. (© 18-20)

The approved CIP project for the new Silver Spring Library says, “This project provides for the design and construction of a mixed use facility at Wayne Avenue and Fenton Street which includes a new modern 38,200 net square foot (up to 58,000 GSF) library, designed to better serve its demographically and ethnically diverse residents, and its growing business community; as well as 20,000 square feet of art gallery, classroom space and a coffee bar...” The Council has previously discussed that in 2009 the Executive awarded the arts space to Pyramid Atlantic in response to a 2008 solicitation for proposals.

The proposed lease is for approximately 15,500 square feet of net useable space. The Executive has estimated the annual value of the leased space to be \$421,000 based on the approximate value of comparable leasing options (© 20). In lieu of rent, Pyramid Atlantic will provide certain services and community programs at its sole cost. The types of programming required are included at © 21. At the April meeting, the joint Committee had an extended discussion about the proposed programming, how it was valued, and how compliance would be monitored.

The initial term of the lease is for five years. There are three additional five year renewals, so the lease could be in place for up to 20 years. The County will have the right to terminate the lease at the end of the initial 5 year term should it be determined that the premises are needed for any other public purpose or to replace Pyramid Atlantic with another arts related organization if Pyramid Atlantic is not in full compliance with the lease terms. The County would pay a termination fee equivalent to the unamortized cost of the tenant build-out.

The proposed lease allows Pyramid Atlantic to sublease in two ways. The first is a sublease to an Arts Organization(s). Such a sublease would not require the County's consent provided that the sublease shall be expressly subject to the County right's under the Lease, the subtenant shall provide services related to the Services and Community Programs to be provided by Tenant under the Lease, and the subtenant shall be "cost neutral" such that the rent paid by the subtenant shall be less than or equal to the sum of the Tenant's costs associated with the applicable portion of the Lease Premises. The proposed lease specifically discusses gallery and office space for Washington Printmakers Gallery which has since moved and so will not be a subtenant. The previous discussions about planned programming included the expectation that there would be artists in residences so there has been an expectation that some subleases would occur.

The second type of subleasing is to non-Arts Organizations. This requires the County's written consent and procedures are in the proposed lease.

B. Council Staff Comments and Recommendations

In approving a Declaration of No Further Need, the Council is agreeing with the Executive's recommendation that the government will not need the subject space for the period of time proposed and that it agrees with the material terms of the lease. **The Council does not approve or execute a lease when it approves a Declaration of No Further Need. The Executive is also not required to dispose of the property or execute the lease even though the Council has authorized the disposition under the material terms. It is important for all involved and the public understand that when the Council approves a Declaration of No Further Need, there is additional time and negotiations that must occur before the lease is executed.**

1. No Further Need of the Property for Up to 20 Years

Council staff agrees that this property should be disposed of for art gallery, program, and classroom use as planned for during the CIP process and that 20 years (in 5 year increments) is a reasonable time given the requirement on the art organization for build out of

the space. The Council discussed whether additional space was needed at the library for other County uses during its CIP worksessions and was told that this was not necessary.

2. Approval of No Further Need Based on Current Material Terms

Recently, Pyramid Atlantic has had preliminary discussions with several arts organizations about creating an arts consortium that would be housed in this space. Council staff understands that if the lease with Pyramid Atlantic is executed then these organizations would be involved in the planned build-out of the space. Each organization would likely have some dedicated space but there would also be shared classrooms and other common spaces. Pyramid Atlantic already leases space to Class Act Arts' Project Youth ArtReach and has collaborated with Carpe Diem and CREATE Arts, all of which may be part of the consortium. The Executive Director of Pyramid Atlantic has discussed with Council staff that, while they could return to only thinking about artists in residence, using the space to support the ongoing efforts of established local arts organizations is a good way to support the arts community.

The 2008 RFP sought proposals that would:

1. Contribute to the mission of the Montgomery County Public Libraries creating a synergy that enhances both the arts and enjoyment and use of the Silver Spring Library.
2. Enhance and strengthen providing a cultural destination space in the Silver Spring Central Business District.
3. Provide cultural and educational opportunities to the residents of Montgomery County and enhance the quality of life in the County.
4. Enhance the understanding and love of the arts and increase participation in the arts by residents of Montgomery County.
5. Contribute to the development of the arts and artistic opportunities in Montgomery County by making available public space for studios, public exhibitions, education, and/or development of artistic skills and creativity.

The RFP required that if the applicant is a joint venture, information on each entity should be furnished as well as how the arts use will be managed by the partners. The RFP sought proposals for the use of the entire space.

While a consortium of arts organizations would surely meet the goals of the solicitation to provide cultural opportunities, contribute to the development of the arts, enhance the love of the arts, and increase participation in the arts, the award was made to Pyramid Atlantic which would be the leaseholder. Any other members of the consortium would be subtenants. The proposed lease is for the entire space. It is unclear whether the County would have issued more than one RFP if it envisioned multiple organizations be long-term tenants in the space.

Council staff recommends that the joint Committee ask the Executive to review three items in the proposed lease and one previous response and provide a response about whether the Executive recommends any changes to the material terms.

Subleasing to Arts Organization – Does there need to be further definition of what a “cost neutral” rent would include? (Council staff notes that the Executive’s March 25, 2014 response

stated that there would be no profits from any Arts Organization subleases). Should there be a defined time period by which the tenant has to provide the County with copies of any sublease and supporting documentation? The proposed lease requires this prior to the effective date of each sublease but should it be something more specific, such as 30 days prior?

Limitations on Grant Funding – The proposed lease says that no County grant funding shall be used by the tenant for any design or construction costs, tenant build-out, or for any utilities or ordinary repair or maintenance costs associated with the leased premises except that the tenant can requested County grant funding for a state bond match. Are their any changes that need to be made to this provision to be clear what the intent is regarding subtenants?

Tenant's Services and Community Programs – The proposed lease specifies artist residencies. Is this still expected? It is also not clear whether a subtenant could provide some of the required programming either alone or in partnership with Pyramid Atlantic.

Payment of Utilities – At its April session, the joint Committee discussed the Executive's response that Pyramid Atlantic is required to pay all utilities and that the Executive will seek to establish this as a consistent requirement for all arts organization's lease agreements. Should there be communication with the organizations that may be a part of a consortium that this is the policy and that County grant funding would not be available to pay for utilities?

Council staff could circulate the response to determine if an additional joint Committee session is needed.

3. Full Market Value Transaction

At the April session, the joint Committee discussed that the material terms of the lease say that the \$421,000 annual value of the leased space will be abated because Pyramid Atlantic is providing certain services and community programs at its sole cost. Pyramid Atlantic provided a breakdown of the in-kind service program valuation that estimated the value to be \$452,292 in a year. (©25-29)

The October 7, 2013 memo from the Executive said that it is difficult to quantify the dollar value of the services and programs and Executive staff previously shared that a valuation could not be completed until the lease is fully negotiated. The Executive is proposing this disposition as a full market value transaction. Council staff believes that when something is approved as a full market transaction, there is a burden of proof that should be met. **Council staff recommends that the Council waive the requirement for a full market transaction. This would in no way change the terms of the proposed lease which have specific numbers of workshops, internships, outreach classes, artist lectures, and exhibitions, and artist residences that must be provided.** It would acknowledge that the value might not always meet or exceed the estimated value of the leased space.

4. Waiving the Public Hearing

The property disposition process calls for a public hearing (with at least 15 days notice) prior to adopting a resolution approving a Declaration of No Further Need or a disposition of the property at less than full market value. **Council staff recommends waiving the public hearing requirement.** There have been multiple worksessions on this issue and the use of the Library space for the arts is part of an Approved CIP.

Attached to this packet:	Circle
October 8, 2014 memo from Asst. CAO to HHS and GO Committee Chairs	1-3
FY15 Approved CIP PDF Ripley Street	4
Resolution 17-1174, Extension of Time for Action	5-6
Executive Order 53-14, Disposition of Space in new Silver Spring Public Library	7-9
March 25, 2014 memo from County Executive to Council President – Questions about material terms	10-14
October 30, 2013 memo from Council President Council comments on material terms	15-17
October 7, 2013 memo from County Executive Material terms of Pyramid Atlantic Lease Agreement	18-22
October 7, 2013 memo from Asst. CAO to Council staff Responses to questions about material terms	23-25
April 2, 2014 Valuation of Pyramid Atlantic	25-29



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

October 8, 2014

TO: George Leventhal, Chair
Health and Human Services Committee

Nancy Navarro, Chair
Government Operations and Fiscal Policy Committee

FROM: Ramona Bell-Pearson *Ramona Bell-Pearson*
Assistant Chief Administrative Officer

SUBJECT: Declaration of No Further Need -
Pyramid Atlantic Lease Updates

The purpose of this memorandum is to update the Council on the status of the Pyramid Atlantic lease agreement for use of the lower level spaces in the Silver Spring Library that is currently under construction at Wayne Avenue and Fenton Street in Silver Spring Maryland.

Background

On October 7, 2013 the County Executive issued material terms for the Council to consider as part of the disposition of property process. In the first joint Government Operations and Fiscal Policy Committee and Health and Human Services Committee meeting, Council raised questions about the disposition and material terms of the lease. At that conclusion of that first meeting the Committees issued questions to the Executive pertaining generally to the valuation of services to be provided by Pyramid Atlantic and about property owned by Pyramid located at Ripley Street and Georgia Avenue from which the County needs to acquire right of way to complete a master planned road redevelopment.

Executive Staff worked on the issues and questions raised by Council and a response was filed with Council on March 25, 2014 by the Executive. In that response the Executive took the position that the lease agreement with Pyramid Atlantic was being separated from the dedication of right of way related to the property that Pyramid presently holds an ownership interest in.

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www.montgomerycountymd.gov



Pyramid had communicated to the Executive that they no longer hold the right to dedicate the property because of a purchase contract they entered for sale of their property located at 8230 Georgia Avenue in Silver Spring Maryland in February 2010. Final closing on the property under the terms of their purchase agreement is to take place no later than October 31, 2014. Under those contract terms all negotiating rights for any right of way were delegated to Maisel Development, the contract purchaser.

On March 25, 2014 the Executive also filed a declaration of no further need through Executive Order 53-14 for the disposition of space for use under a lease by Pyramid Atlantic. The filing of the declaration of no further need along with responses to the Council's questions about the material terms started the sixty day period for Council consideration and approval under the disposition regulations. On April 3, 2014 the joint GO and HHS Committees met again to consider the Pyramid Atlantic lease and for the first time to consider the Executive's declaration of no further need.

At the April 3, 2014 meeting the Council had discussions with Executive Staff representatives, a representative from the Arts and Humanities Council and a representative from Pyramid Atlantic. That meeting resulted in a determination by Council that the lease agreement would not be separated from the dedication of property needed by the County for the Ripley Street road development project. As a result of that determination the Committees issued a request to the Executive further explore the possibility of obtaining a dedication of right of way from the current contract purchaser, Harvey Maisel, for 8230 Georgia Avenue in Silver Spring Maryland. To allow time to explore that option the Committee recommended and the Council approved a resolution to extend the time of Council consideration of the declaration of no further need beyond the sixty (60) days permitted under the property disposition regulations. The Council extended the time for consideration until December 2014.

Recent Activity

Executive Staff entered into negotiations with Harvey Maisel, Joan Weber and Pyramid Atlantic Board Members as representative owners of the 8230 Georgia Avenue property. The Department of Transportation Staff had an engineering survey of the property done which was followed by a full appraisal of the property. It was determined that an approximate 20 square feet strip of property owned by Maisel Development and Pyramid Atlantic was needed for the 225 square feet of redevelopment of Ripley Street. After several months of protracted negotiations, Staff has determined that an impasse has been reached and negotiations have been concluded as unsuccessful. While Maisel Development was willing to dedicate the 20 square feet needed for the road project, their valuation of the building that the County would have an obligation to restore after the right of way is taken far exceeded the appraisal price assessed by the County appraisal. The dedication was contingent upon reaching agreement to the price for repairs to the building and the County was unable to meet the price demand.

Executive Staff has discontinued negotiations with Maisel Development and will not pursue any further attempts to obtain right of way for the Ripley Street project. As a result of that action, the Executive has determined that an alternative project will be implemented for the redevelopment of Ripley Street. The alternative project allows for the street to be widened

enough to accommodate the needed bus turning radii, an improved road, improved sidewalks and improved street lights. All improvements will enhance the area, increase pedestrian safety and be consistent with other improvements and redevelopments in the area. All of the above referenced improvements will be performed exclusively in the existing right of way that the County currently holds in the vicinity of 8230 Georgia Avenue. There will be no need for dedication or purchase of right of way under this smaller road development project. The referenced smaller road development project will be afforded under the current approved CIP.

Despite the fact that the County was not able to obtain the right of way for this road redevelopment, Ripley Street is a master planned road that anticipates expansion through obtaining right of way. If any property owner decides in the future to redevelop the 8230 Georgia Avenue building they will be required to dedicate property before any development plans can be approved by the Planning Board. When dedication occurs under those circumstances the Owner will not be able to retain the FAR or any density attributes from the property. Had Maisel Development dedicated to the County for this road project then the County was prepared to allow the retention of FAR so that any redevelopment by the Owner could have improved density.

Recommendations

The Executive continues to recommend that Council separate the issue of right of way for the Ripley Street road development project from the approval of this declaration of no further need as he expressed in his earlier memorandum to the Council President. If Council approves this declaration then Pyramid Atlantic will be able to finalize negotiations of the lease agreement and commence the construction of their space to occupy the new library. During the recent negotiations with Maisel Development the Pyramid Atlantic Board Members were actively involved and assisted the County in conducting negotiations in attempts to acquire dedication of the right of way. While the discussions were unsuccessful, the Pyramid Board held several meetings separately with Mr. Maisel and Ms. Weber in an attempt to reach a compromise that would allow the County to obtain the right of way and recommended to Maisel Development that the right of way should be dedicated to the County.

The new Silver Spring Library will include lower level space that is intended to accommodate arts programming such as gallery space and other art focused programming that will be coordinated with library services. The lease will be administered by the Office of Real Estate Management within General Services. There will be regular reports about the programming and accountings annually about the valuation of services that are provided to the Community. The Library Department will have regular contact and coordinated programming with Pyramid Atlantic throughout the term of the lease. Pyramid has indicated its intent, to Executive Staff, to enter sublease agreements with arts service providers such as Artists in Residence as part of their provision of services under the lease agreement. The County intends to obtain a better understanding of subletting plans and more approval authority to the review and approval of sublease agreements as part of the final lease negotiations if the Council approves this declaration for the disposition of this space.

Ripley Street (P501403)

Category Transportation
Sub Category Roads
Administering Agency Transportation (AAGE30)
Planning Area Silver Spring

Date Last Modified 1/6/14
Required Adequate Public Facility No
Relocation Impact None
Status Final Design Stage

	Total	Thru FY13	Est FY14	Total 6 Years	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Beyond 6 Yrs
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EXPENDITURE SCHEDULE (\$000s)

	Total	Thru FY13	Est FY14	Total 6 Years	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Beyond 6 Yrs
Planning, Design and Supervision	67	0	47	20	20	0	0	0	0	0	0
Land	325	0	0	325	325	0	0	0	0	0	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	385	0	0	385	385	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	777	0	47	730	730	0	0	0	0	0	0

FUNDING SCHEDULE (\$000s)

	Total	Thru FY13	Est FY14	Total 6 Years	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Beyond 6 Yrs
G.O. Bonds	777	0	47	730	730	0	0	0	0	0	0
Total	777	0	47	730	730	0	0	0	0	0	0

OPERATING BUDGET IMPACT (\$000s)

	Total	Thru FY13	Est FY14	Total 6 Years	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Beyond 6 Yrs
Energy				5	0	1	1	1	1	1	
Maintenance				5	0	1	1	1	1	1	
Net impact				10	0	2	2	2	2	2	

APPROPRIATION AND EXPENDITURE DATA (000s)

Appropriation Request	FY 15	0
Appropriation Request Est.	FY 16	0
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		777
Expenditure / Encumbrances		0
Unencumbered Balance		777

Date First Appropriation	FY 14	
First Cost Estimate		
Current Scope	FY 14	777
Last FY's Cost Estimate		777

Description

This project provides funding to participate with a developer in the design, review, land acquisition and construction for the widening of the north half of Ripley Street between the east end of the 1150 Ripley Street Development (near Dixon Avenue extended) and Georgia Avenue, a distance of approximately 225 feet. Ripley Street falls within the Silver Spring Central Business District where a focus on a transit-oriented and pedestrian-friendly environment around the Silver Spring Transit Center is critical. The Ripley Street improvements will upgrade the northern portion of the roadway from 35 feet north of the centerline and will be designed and constructed to Montgomery County Standard No. MC- 214.03, Commercial/Industrial Road with a 70-foot width of right-of-way. The southern portion of Ripley Street will be implemented through the subdivision process if the property to the south redevelops.

Estimated Schedule

Design started in FY14. Land acquisition and construction will be completed in FY15.

Justification

The proposed improvement of Ripley Street is shown in the Silver Spring Central Business District and Vicinity Sector Plan, approved and adopted in March 2001. Ripley Street falls within the Silver Spring Central Business District where a focus on a transit-oriented and pedestrian-friendly environment around the Silver Spring Transit Center is critical.

Other

This project will be coordinated with improved access to relocated Progress Place and to the Silver Spring Transit Center.

Fiscal Note

Of the total project cost (\$3.11 million), the estimated cost of the County's portion is 25% and the developer's portion is 75%. The County's portion (\$777,000) will support funding for design, land acquisition, site improvements, utility relocation, and construction.

Disclosures

A pedestrian impact analysis has been completed for this project.

Coordination

Maryland State Highway Administration
 Maryland-National Capital Park and Planning Commission
 Developer

Resolution No.: 17-1174
Introduced: July 22, 2014
Adopted: July 22, 2014

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Extend the Time for Council Action for Approval of Declaration of No Further Need: Disposition of Space in New Silver Spring Library (Proposed Lease to Pyramid Atlantic)

Background

1. Montgomery County Code §11B-45 requires the Council to approve a Declaration of No Further Need before the County Executive can dispose of real property that has more than nominal value. Prior to seeking Council approval of a Declaration of No Further Need, the Executive must:
 - (a) submit all material terms of the proposed disposition and any appraisal the Executive relied on in setting the property's market value to the Council; and
 - (b) publish a declaration in the County Register and post a notice on the County website that the County has no further need for the property.

The Council must act on the Declaration of No Further Need within 60 days of receiving the Declaration or it is automatically approved. The Council may extend the 60-day deadline by resolution if the Council President has informed the Executive, within 30 days of receiving the proposed action, that the Council has not received all information necessary to review the proposed action.

2. On October 7, 2013 the Executive submitted a summary of the material terms for the disposition of County-owned space within the new Silver Spring Library. The Executive recommends that the space be leased to Pyramid Atlantic for an initial term of five years with three additional five-year terms. A joint meeting of the Council's Health and Human Services and Government Operations and Fiscal Policy Committees was held on October 10, 2013 to review the material terms. On October 30, 2013 the Council sent comments and questions to the Executive regarding the material terms of the lease.
3. On March 25, 2014 the Council received Executive Order 53-14, Disposition of space through lease agreement in the new Silver Spring Library, intersection of

Wayne Avenue and Fenton Street, Silver Spring, Maryland. A joint meeting of the Council's Health and Human Services and Government Operations and Fiscal Policy Committee was held on April 3, 2013 to review the Declaration and the Executive's March 25, 2014 responses to the Council's questions.

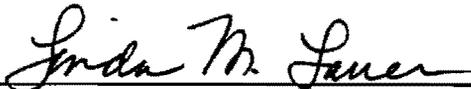
4. The joint Committee recommended that the Council extend the time for action on the Executive's Declaration of No Further Need. The joint Committee requested additional information on the valuation of programs and services to be provided by Pyramid Atlantic, how these programs and services benefit Montgomery County residents, expected participation in these programs and services by Montgomery County residents, and the County's cost to purchase the Pyramid Atlantic property necessary for the programmed improvements to Ripley Street.
5. On April 3, 2014 the Council President informed the Executive that the Council intends to extend the time for action.
6. On April 8, 2014, the Council adopted Resolution No. 17-1053, Extend the Time for Council Action for Approval of Declaration of No Further Need: Disposition of Space in New Silver Spring Library (Proposed Lease to Pyramid Atlantic). The Council extended time for action to July 25, 2014.
7. The Executive branch is continuing to work with Pyramid Atlantic and the contract purchaser of Pyramid Atlantic's property to determine the County's cost for land necessary for the programmed improvements to Ripley Street. Therefore, additional time is need for the Council consideration of the proposed disposition of space within the new Silver Spring Library.

Action

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

The time for Council action on the Declaration of No Further Need contained in Executive Order 53-14, Disposition of space through lease agreement in the new Silver Spring Library, intersection of Wayne Avenue and Fenton Street, Silver Spring Maryland, is extended to December 31, 2014.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

GOVT



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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 25, 2014

TO: Craig Rice, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Executive Order 53-14
Disposition of Space in the new Silver Spring Public Library

On October 10, 2013 the Council's Government Operations and Fiscal Policy Committee jointly with the Health and Human Services Committee held a work session to review the material terms for the disposition through a 5 year lease agreement with Pyramid Atlantic of County-owned property located within the new Silver Spring Library located at the intersection of Wayne Avenue and Fenton Street, Silver Spring, Maryland. As a result of that submission during a closed session Council made comments. Under separate memorandum I have submitted responses to those comments in further support of my plan to finalize the disposition of this property.

As required under Section 11B-45 of the Montgomery County Code, the County Executive must issue an Executive Order declaring that the County-owned site is no longer needed for public use. Attached please find Executive Order 53-14 which will be published in the April *County Register* to give notice of my intent to proceed with the disposition through lease of space in the new Silver Spring Library and to declare that the space is no longer needed for public use during the period of the lease and any subsequent lease renewals contemplated in the lease agreement.

I hope this information is helpful. If you have any questions, please feel free to contact me directly or speak with Greg Ossont at 240.777.6192 or greg.ossont@montgomerycountymd.gov.

Attachment

cc: Ramona Bell-Pearson, ACAO
Greg Ossont, Deputy Dir. DGS

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2014 MAR 25 AM 8:53



7



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Disposition of space through lease agreement in the new Silver Spring Library intersection of Wayne Avenue and Fenton Street, Silver Spring, Maryland

Executive Order No.
53-14

Subject Suffix

Department General Services

Department No.

Effective Date
3/24/14

WHEREAS, Capital Improvements Project (“CIP”) No. 710302 (Silver Spring Library), as approved by the County Council contemplates the leasing of certain space within the future Silver Spring Library building to an Arts Organization and

WHEREAS, in accordance with the CIP, the Department of General Services (“DGS”) issued a Request for Proposals (“RFP”) seeking proposals from Arts Organizations interested in providing Arts services to the Community as part of Public Library programming and in exchange for lease space in the lower level of the future Silver Spring Library which resulted in the selection of Pyramid Atlantic in March 2009; and

WHEREAS, pursuant to the RFP, Pyramid Atlantic and the County desire to enter into a 5 year Lease Agreement that contains three 5 year renewal options (“Agreement”) with Pyramid Atlantic as the Tenant and Program Provider; and

WHEREAS, pursuant to subsection 4.0 of Montgomery County Executive Regulation 11B.45.01 (the “Property Disposition Regulation”), because the proposed disposition of County property has been approved as part of a CIP, the proposed disposition is exempt from the Preliminary Reuse Review and the Reuse Analysis components of the Property Disposition Regulation; and

WHEREAS, the County Executive has determined that the County property proposed to be leased to Pyramid Atlantic is not needed for public use and is appropriate for disposition; and

WHEREAS, as required under §11B-45 of the Montgomery County Code, the County Executive must issue an Executive Order declaring that County owned or controlled real property is no longer needed for public use.

8



MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Disposition of space through lease agreement in the new Silver Spring Library intersection of Wayne Avenue and Fenton Street, Silver Spring, Maryland	Executive Order No. 53-14	Subject Suffix
Department General Services	Department No.	Effective Date 3/24/14

ACTION

In consideration of the above recitals, the County Executive declares that certain ground level space within the new Silver Spring Library building that is proposed to be leased to Pyramid Atlantic is not longer needed for public use for the period of time of the 5 year lease term and any 5 year renewal periods granted as authorized within the lease agreement, and hereby directs the Department of General Services to take all steps necessary to dispose of such space by way of a lease agreement as described in this Executive Order.

Approved as to Form and Legality
Office of the County Attorney

By: *[Signature]*
Date: 3/24/14

APPROVED

[Signature]
Ramona Bell-Pearson
Assistant Chief Administrative Officer

Distribution:

- County Council
- County Attorney
- Department of General Services
- Department of Transportation

GOVT



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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Isiah Leggett
County Executive

MEMORANDUM

March 25, 2014
RECEIVED
MONTGOMERY COUNTY
COUNCIL
2014 MAR 25 AM 8:53

TO: Craig Rice
Council President

FROM: Isiah Leggett *Isiah Leggett*
County Executive

SUBJECT: County Response to Council Questions about Material Terms for
Disposition of Space in the new Silver Spring Library to Pyramid Atlantic

On October 10, 2103 the Council's Government Operations and Fiscal Policy Committee and Health and Human Services Committee held a joint worksession to review the material terms of the proposed lease to Pyramid Atlantic of space in the new Silver Spring Library. Space in the new Silver Spring Library is being built for art gallery and classroom space and will be disposed for that purpose for a minimum of 5 years or longer should lease renewal terms become effective.

This memo provides clarification to some items about the proposed lease that were discussed at the worksession while also responding to the Council's comments made and questions raised after the worksession. These responses are being provided separately from the recommended Declaration of No Further Need which is being forwarded under separate cover.

Clarifications discussed at the joint Committee session

- The County will be able to make a decision to renew or not renew the lease at the end of each five-year period.

Answer: That is correct as stated at the Committee worksession each five year renewal period will afford the County the opportunity to determine if renewal is the appropriate course of action.



- Pyramid Atlantic will be able to sublease space that will bring in revenue to Pyramid Atlantic. Pyramid Atlantic does not need County approval to sublease to other artists and arts organizations but must receive County approval to sublease to a non-arts organization.

Answer: This statement is not completely accurate. The Pyramid Atlantic sublease to any Arts Organization does not need to be approved by the County but the revenue received from the sub lessee must be cost neutral. This means that the rent paid by the sub lessee must be less than or equal to Pyramid Atlantic's costs associated with that portion of the leased premises. They will make no profits from any Arts Organization subleases.

- The County did an audit and analysis of Pyramid Atlantic's financial capacity that included the expected income from the sale of Pyramid Atlantic's current building/site. The County believes that Pyramid Atlantic is on sound footings for five years but the County could not project beyond that which is why there are five-year renewal options.

Answer: That is correct.

- Pyramid Atlantic's representative said that the current building/site has been sold for \$2.3 million. The organization has been advanced \$500,000 to cover expenses and planning for the new facility. Pyramid Atlantic will need about \$504,000 for mortgage pay-off. This will leave \$1,300,000 which will be used to pay for the build-out in the new Silver Spring library.

Answer: That is the understanding the County has based on statements provided by Jose Dominguez as the Pyramid Atlantic Executive Director.

Questions/Information Requests

- Please provide a map/sketch of Ripley Street showing the right-of-way that is needed to make the planned road and sidewalk improvements and the owners of each of the properties.

Answer: Please see the attached map of the Ripley Street area.

Craig Rice, President

March 25, 2014

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- The Approved PDF for Ripley Street includes \$325,000 in County funds for the purchase of land and a total of \$777,000 for the entire project. The PDF says that the total cost of the project is estimated to be \$3.11 million, the County's portion is 25%, and the developer's portion is 75%. Referencing the map/sketch requested above, please provide information on developer(s) contribution, which parcel(s) it is related to and whether a final agreement(s) have been signed for the developer(s) contribution.

Answer: The final agreement that will address the Developer contribution as well as the specifics of the Public/ Private Development projects will be the General Development Agreement that has not yet been finalized with the private developer. The Departments of General Services and Transportation have been working with the Developer toward to goal of establishing areas of responsibility and other material terms related to the road redevelopment and Progress Place redevelopment projects. The declaration of no further need was passed by Council through Resolution on February 25, 2014 so the General Development Agreement related to Progress Place is proceeding toward finalization.

- What is the status of the sale of the Pyramid Atlantic property to the "contract purchaser"? Does the contract between Pyramid Atlantic and the contract purchaser include any language regarding deeding the right-of-way to the County, any expected payment from the County, or any agreement negotiate a price rather than require a condemnation process?

Answer: Based on information provided by Jose Dominguez, Robin Salomon and Harvey Maisel the Contract Purchaser is responsible for making decisions related to the sale or disposition of any property until October 2014 after which time the transfer of property and sale will be completed between Pyramid Atlantic and Mr. Maisel. Pyramid Atlantic has an agreement permitting them to remain in the building as Tenants until March 2015. The County has been given no information that the contract permits or requires any deed of right of way to the County by either Pyramid Atlantic or Mr. Maisel. Neither Pyramid Atlantic nor Mr. Maisel have indicated any interest in dedicating the right of way needed for the road redevelopment. Mr. Maisel did permit the County to conduct an inspection of the property in January 2014 which resulted in a report indicating that 19 ½ feet of front footage and an addition amount of the property covering a portion of the building at 8320 Georgia Avenue will be needed for the right of way. Mr. Maisel is

in the process of evaluating the report and will respond to the County's request to either dedicate or negotiate a friendly condemnation of the property needed.

- Why is the acquisition of the needed right-of-way on Ripley Street not addressed in the terms of the lease of the library space to Pyramid Atlantic?

Answer: By the time that the lease agreement was developed Pyramid Atlantic had already informed the County that a purchase agreement for sale of the property to Mr. Maisel had been finalized without any mention of a dedication being made in that purchase agreement. Mr. Dominguez advised the County that while there were earlier discussions about the right of way needed from Pyramid's property for the road redevelopment, Pyramid had financial troubles that required them to finalize the agreement for purchase with Mr. Maisel before the County made any formal demand for the right of way to Pyramid.

- Please provide information from the contract purchaser of Pyramid Atlantic and the proposed purchaser of the current Progress Place building/site regarding their view(s) of their responsibility for providing the required right-of-way and whether the costs and responsibilities have been allocated fairly.

Answer: The Developer has not given any substantive comments to the cost allocations because we have not completed our GDA with them to finalize the plan for their contribution obligations. It is fair to say that the Progress Place Developer has not raised any concerns to DOT or DGS about the plan to allocate 75% of the costs for the road redevelopment project to the Developer and 25% of the costs to the County. This Developer has also signed a letter of intent with DOT in which he is responsible to contribute 75 % of the total cost for the project, including a partial acquisition of property needed for the road redevelopment.

As to Mr. Maisel, he has the inspection report which makes some estimates on land value related to the ROW needed from his property and he has agreed to consider the information and consult with his architectural, engineering and other experts to make his own assessments about fair market value. The County is continuing to move forward by finalizing an appraisal of the property which will also be shared with Mr. Maisel once completed. Mr. Maisel agreed to respond to the cost allocations made in the inspection report after March 21, 2014.

Craig Rice, President

March 25, 2014

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- The County pays for utilities for several arts organizations that are housed in County-owned facilities. The proposed lease with Pyramid Atlantic requires it to pay all utilities and Pyramid Atlantic confirmed that they will do so. What is the County Executive's policy about County payment of utilities for arts organizations housed in County-owned facilities? Is Pyramid Atlantic a unique situation or will the Executive look at this requirement in all leases to arts organizations?

Answer: The Executive will seek to establish this as a consistent requirement for all arts organization lease agreements.

- Please confirm that the lease will include language that Pyramid Atlantic's performance plan will include reporting on the number/percentage of artists-in-residence, internships, and exhibitors that are Montgomery County residents. This performance plan will be used to inform the County in its future decisions about whether to enter into each five-year renewal.

Answer: The lease does not include language that requires reporting specifically on the presence of artists in residence, internships and exhibitors that are Montgomery County residents. The Library Director has; however, committed to use her authority under the lease to require Pyramid Atlantic to include some percentage of local artists.

cc: Councilmembers
David Dise, Director, DGS
Ramona Bell-Pearson, Assistant CAO
Greg Ossont, Deputy Director, DGS
Bruce Johnston, DOT
Mary Beck, OMB
Jose Dominguez, Pyramid Atlantic



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

MEMORANDUM

October 30, 2013

TO: Isiah Leggett
County Executive

FROM: Nancy Navarro *NV*
Council President

SUBJECT: Council Comments on Material Terms for Disposition of Space in the new Silver Spring Library to Pyramid Atlantic

On October 10, 2103 the Council's Government Operations and Fiscal Policy Committee and Health and Human Services Committee held a joint worksession to review the material terms of the proposed lease to Pyramid Atlantic of space in the new Silver Spring Library. Space in the new Silver Spring Library was built for art gallery and classroom space.

This memo provides a summary of some items about the proposed lease that were discussed at the worksession and the Council's comments and questions. Should you disagree with any of the clarifications, please let the Council know. I am requesting that you provide responses to the questions when you forward your recommended Declaration of No Further Need.

Clarifications discussed at the joint Committee session

- The County will be able to make a decision to renew or not renew the lease at the end of each five-year period.
- Pyramid Atlantic will be able to sublease space that will bring in revenue to Pyramid Atlantic. Pyramid Atlantic does not need County approval to sublease to other artists and arts organizations but must receive County approval to sublease to a non-arts organization.

- The County did an audit and analysis of Pyramid Atlantic's financial capacity that included the expected income from the sale of Pyramid Atlantic's current building/site. The County believes that Pyramid Atlantic is on sound footings for five years but the County could not project beyond that which is why there are five-year renewal options.
- Pyramid Atlantic's representative said that the current building/site has been sold for \$2.3 million. The organization has been advanced \$500,000 to cover expenses and planning for the new facility. Pyramid Atlantic will need about \$504,000 for mortgage pay-off. This will leave \$1,300,000 which will be used to pay for the build-out in the new Silver Spring library.

Questions/Information Requests

- Please provide a map/sketch of Ripley Street showing the right-of-way that is needed to make the planned road and sidewalk improvements and the owners of each of the properties.
- The Approved PDF for Ripley Street includes \$325,000 in County funds for the purchase of land and a total of \$777,000 for the entire project. The PDF says that the total cost of the project is estimated to be \$3.11 million, the County's portion is 25%, and the developer's portion is 75%. Referencing the map/sketch requested above, please provide information on developer(s) contribution, which parcel(s) it is related to and whether a final agreement(s) have been signed for the developer(s) contribution.
- What is the status of the sale of the Pyramid Atlantic property to the "contract purchaser"? Does the contract between Pyramid Atlantic and the contract purchaser include any language regarding deeding the right-of-way to the County, any expected payment from the County, or any agreement negotiate a price rather than require a condemnation process?
- Why is the acquisition of the needed right-of-way on Ripley Street not addressed in the terms of the lease of the library space to Pyramid Atlantic?
- Please provide information from the contract purchaser of Pyramid Atlantic and the proposed purchaser of the current Progress Place building/site regarding their view(s) of their responsibility for providing the required right-of-way and whether the costs and responsibilities have been allocated fairly.

- The County pays for utilities for several arts organizations that are housed in County-owned facilities. The proposed lease with Pyramid Atlantic requires it to pay all utilities and Pyramid Atlantic confirmed that they will do so. What is the County Executive's policy about County payment of utilities for arts organizations housed in County-owned facilities? Is Pyramid Atlantic a unique situation or will the Executive look at this requirement in all leases to arts organizations?
- Please confirm that the lease will include language that Pyramid Atlantic's performance plan will include reporting on the number/percentage of artists-in-residence, internships, and exhibitors that are Montgomery County residents. This performance plan will be used to inform the County in its future decisions about whether to enter into each five-year renewal.

C: Councilmembers
David Dise, Director, DGS
Ramona Bell-Pearson, Assistant CAO
Greg Ossont, Deputy Director, DGS
Bruce Johnston, DOT
Mary Beck, OMB
Jose Dominguez, Pyramid Atlantic



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 7, 2013

TO: Nancy Navarro, President
County Council

FROM: Isiah Leggett
County Executive

SUBJECT: Material terms of Pyramid Atlantic Lease Agreement

This memorandum seeks comments from Council relevant to the proposed disposition of a portion of the Silver Spring Library that is intended to be occupied by an arts service provider. This submission is in accordance with the provisions of Montgomery County Code, 11B-45 titled Disposition of Real Property. Section 11B.45(d) provides for Council comment before the Executive seeks County Council approval of a declaration of no further need. It states in part: "...the County Executive must submit to the Council and allow the Council at least 30 days to comment on: (1) all material terms of the disposition, including the price or rent to be paid and any associated economic incentives; and (2) any appraisal that the Executive relied on or will rely on in setting the property's market value."

History

In December 2008, the Department of General Services (hereafter DGS) and the Silver Spring Regional Center issued a solicitation for proposals from qualified non-profit arts organizations to be included in a mixed use project on the site currently designated for development as the new Silver Spring Library to be located on Fenton Street between Wayne Avenue and Bonifant Street in downtown Silver Spring. The goals and objectives included:

- To enhance and strengthen the arts in Silver Spring by providing a cultural destination space in the Central Business District.
- Contribute to the mission of the Montgomery Public Libraries by creating a synergy that enhances both the arts and the enjoyment and use of the Silver Spring Library.

- Provide cultural and educational opportunities to the residents of Montgomery County and enhance the quality of life in the County.
- Enhance the understanding and love of the arts and increase participation in the arts by residents of Montgomery County.
- Contribute to the development of the arts and artistic opportunities in Montgomery County by making available public space for studios, exhibitions, education, and/or development of artistic skills and creativity.

Pyramid Atlantic, Inc., a local non-profit arts organization that has programs for paper making, printing, and book binding as an art form, met the County's objectives and was selected for the Library project in March 2009. The County and Pyramid Atlantic, Inc. have negotiated acceptable terms and conditions and now desire to enter into a lease agreement. In addition the Silver Spring Library development is in final stages for commencement of construction and the arts facility needs to be ready to build out in a timely manner so that completion of the arts facilities will be coordinated with completion of the library facilities.

Material Terms

This represents a summary of the material terms of the lease agreement that have been negotiated and approved for finalization by the Executive Branch.

- The County is responsible for constructing the base building.
- Pyramid Atlantic, Inc. is responsible for all costs associated with the tenant build-out including design, permitting and construction of all fit-out, interior finishes, furniture, fixtures and equipment associated with its use of the premises.
- The "Leased Premises" as shown in Exhibit B, shall be approximately 15,500 square feet of net useable space within the Silver Spring Library Complex.
- The County will cause the base building to be designed and constructed to meet LEED Silver requirements. Pyramid Atlantic, Inc. shall cause the tenant build-out of the Leased Premises to be designed and constructed to meet LEED Silver requirements.
- The Lease will be for an initial term of five (5) years. Pyramid Atlantic, Inc. will have the right to renew this Lease for three (3) additional five (5) year terms.
- The County will have the right to terminate the Lease at the expiration of the initial five (5) year term of the Lease should it be determined that the premises are needed for any other public purpose or to replace Pyramid Atlantic with another arts related organization if Pyramid Atlantic is not in full compliance with the

lease terms. The County will pay a termination fee equivalent to the unamortized cost of the tenant build-out.

- Pyramid Atlantic, Inc. will be permitted to use the Leased Premises for various business uses and other uses which would be customary for an arts-oriented studio, office, gallery and theater venue.
- In lieu of payment of rent, Pyramid Atlantic, Inc. will provide certain Services and Community Programs at its sole cost. All such programming shall be provided within and on the Leased Premises unless otherwise agreed in writing by the County and shall comply with all Montgomery County Department of Public Libraries' policies, rules, and regulations as may be in effect from time-to-time.
- This is a triple net lease. Pyramid Atlantic, Inc. will be responsible for utilities, all bills and expenses, taxes assessed by government agencies, and all maintenance, associated with its use of the Leased Premises.
- Pyramid Atlantic, Inc. will submit its annual operating budget to the County at least ninety (90) days prior to the commencement date and each anniversary of the commencement date during the term of this Lease, and Pyramid Atlantic shall allow the County to make recommendations each year of the Lease term to the operating budget as it relates to the provision of Services and Community Programs under the Lease.
- Pyramid Atlantic, Inc. will carry commercial general liability insurance and will properly indemnify the County in association with its use of the Leased Premises.
- Pyramid Atlantic, Inc. will have the right to sublease space within the Leased Premises to other arts development organizations and the County has the right to approve the subleases.

The terms and conditions of the Lease are considered fair to both the County and Pyramid Atlantic, Inc. DGS has estimated the value of the Leased Premises at approximately \$421,000 per annum. The value of the Leased Premises was determined by combining the rental value of the various components (storage, retail, office) into one number. DGS used an independent real estate service called CoStar for comparables and their knowledge of the leasing market to come up with the Library square footage price numbers that are broken down as follows:

Basement (Storage, Studios)	\$17 per Square Foot	\$ 50,490
1 st Floor (Gallery/Workshop)	\$30 per Square Foot	\$117,900
2 nd Floor (Administrative)	\$28 per Square Foot	<u>\$252,644</u>
Total (Rounded)		\$421,000

The Leased Premises will contribute to the overall strategy for the redevelopment of Silver Spring. As you will recall, the Silver Spring Library PDF, previously approved by the County Council, calls for a portion of the building to be dedicated to an arts use. Executive Staff was not asked to take this property through the reuse analysis process that would otherwise be required by the Disposition Regulations because the allocation of this portion of the Silver Spring Library has been previously approved by Council for use as an arts facility. To that extent, the analysis has already been performed to determine the preferred use of this premises is as an arts facility.

Although difficult to quantify the dollar value of the Services and Community Programs, the Department of Libraries, Silver Spring Regional Center and DGS have carefully reviewed the level of Services and Community Programs, and determined them to be a fair exchange of in-kind services for rent of the facility. Services provided in the lease agreement consist of the following:

- Twenty-Eight (28) workshops for youth and adults (year round – beginning in October and ending September 30th) – with the capacity to serve at least one thousand (1,000) youths and adults annually.
- Twenty (20) internships – on a semester basis with five (5) in the Fall, five (5) in the Winter, five (5) in the Spring, and five (5) in the Summer – with the capacity to serve a minimum of twenty (20) students annually.
- Outreach classes at Montgomery County Schools (year round – beginning in October and ending September 30th) – with the capacity to serve a minimum of five hundred (500) students annually.
- Outreach classes at a minimum of eight (8) community organizations selected by Tenant, in its sole discretion (year round – beginning in October and ending September 30th) – with the capacity to serve a minimum of two hundred and fifty (250) youths and adults annually.
- Eight (8) free artist lectures: two (2) in the Fall, two (2) in the Winter, two (2) in the Spring, and two (2) in the Summer – provided by eight (8) separate artists with a target audience of eighty (80) invitees to each artist lecture.
- Twelve (12) exhibitions (One (1) per month beginning in September) – featuring the work of at least one hundred (100) separate artists with a target audience of four hundred (400) persons per exhibition.
- Eight (8) artist residencies: two (2) in the Fall, two (2) in the Winter, two (2) in the Spring, and two (2) in the Summer.

Nancy Navarro, President
October 7, 2013
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- Although difficult to estimate the economic value it will contribute to the establishment of Silver Spring as an arts oriented and supported community.

Next Steps

Once Council has completed its thirty (30) day review of these material terms Executive Staff will review any comments received and negotiate any necessary changes with Pyramid Atlantic. Within fifteen (15) days after Council completes its review of these terms I will send over the declaration of no further need for Council consideration and hopeful approval by resolution.

IL:rpb

cc: David Dise, Director, Department of General Services
Parker Hamilton, Director, Department of Public Libraries
Reemberto Rodriguez, Director, Silver Spring Regional Center

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OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

October 7, 2013

TO: Linda McMillian
Senior Legislative Analyst

FROM: Ramona Bell-Pearson 
Assistant Chief Administrative Officer

SUBJECT: Pyramid Atlantic Lease Terms

Attached you will find the material terms related to the Pyramid Atlantic Lease Agreement that the County has negotiated for the lease of space in what will be the new Silver Spring library.

During our discussions about the draft material terms you raised some questions that I have attempted to answer below. These responses were drafted in consultation with John Fisher as the County Attorney who assisted Library Staff, Department of General Services Staff (DGS) and me in negotiating this agreement.

Questions

Question: The terms for renewal and termination seem pretty limiting to the County. Pyramid Atlantic has a total of 20 years, but the County can only terminate after the initial five years if it needs the space for another public purpose. Is there a reason why this is not allowed at each renewal?

Answer: The County has the right to terminate the lease as of the expiration of any current term of the lease i.e. at the end of each five year lease term (sec. 3.B.)

Question: The phrase "if Pyramid Atlantic is not in full compliance with the lease terms" also seems overly limiting to the County. For example, what happens

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if Pyramid Atlantic provides the 28 workshops with a capacity to serve at least 1,000 but consistently has very low attendance? It is not clear that the County could consider this type of poor performance. Could this phrase be taken out or amended to give the County more flexibility?

Answer: The full compliance only applies if the County is replacing Pyramid Atlantic with another arts-related organization and even then the burden of proof is on Pyramid Atlantic to demonstrate that the County in replacing Pyramid Atlantic with another arts organization acted arbitrarily and capriciously. (Sec. 3.B). Additionally, the Library Staff believe they have flexibility to negotiate or adjust the terms related to work shops. The overall language of the Agreement requires Pyramid Atlantic to meet the needs and programming demands set forth by the Library. They have to be a complimentary partner in programming

Question: Following up on this, there should be a requirement for a yearly report on actual usage not just the programming that will be provided.

Answer: As to yearly reports they can be provided and there is nothing in the lease that would prevent Library Staff from requiring them. The lease; however, already provides for the County's annual review of Pyramid Atlantic's operating budget and allows the County each year to make recommendations as to the provision of Services and Community Programs under the lease (Sec. 11)

Question: Pyramid Atlantic has the right to sublease and the County has the right to approve the subleases. Is the County going to approve the subleases or is it just reserving the right? Is the County placing any limits on the rent that Pyramid Atlantic can charge (such as using the same basis as the County is using for valuing the lease)?

Answer: Subleasing by Pyramid Atlantic is divided into two types. The first is subleases to Arts Organizations which may be subleased without County consent provided they meet the requirements of section 17 A. of the lease which includes, *inter alia*, a requirement for a "cost neutral" sub-rental rate (sec, 17.A). The second is subleases other than to Arts Organizations, which must each be approved by the County (sec. 17 .B. 1 &2) and as to which the County may withhold its consent if in the County's sole discretion the County determines that the sublease will have a negative impact on the Property, the Silver Spring Library Complex, the Base Building, the Leased Premises, the Services or Community Programs or on the surrounding neighborhood.(sec. 17.B.)

Question: Are the internships limited to Montgomery County residents? Are the artists in residence (or some percentage of them) reserved for Montgomery County residents?

Answer: Section 4.A. allows for resident artists and section 4.B. and exhibit J addresses the artist use of the licensed space by the artists. Other than these requirements on the artist only the number of artists is specified by section 5.B.7. As to the internships only the number of

internships is specified by section 5.B.2. There are no other requirements in the lease otherwise pertaining to artists in residence or internships.

Question: Is some percentage of the at least 100 artists that will exhibit reserved for Montgomery County residents? (There are obviously benefits to bringing in non-local artists for residencies and exhibits but since it is County funded space it seems like there should be some portion reserved for County residents).

Answer: While there are no lease provisions that speak specifically to the selection process or require a preference for local artists that are from Montgomery County, the Library has flexibility. The lease gives the Library authority to make suggestions to Pyramid Atlantic that will provide for programming to compliment the library programs. The Library Director is willing to have that discussion about inclusion of local artists with Pyramid Atlantic.

Pyramid Atlantic Program Valuation

Provided to Council 4/2/14

In-Kind Service (per the Lease)	Cost per person for workshop	Individuals Served	Total Value of In-Kind Service	Rationale
<i>Direct Services</i>				
1. Twenty-Eight (28) workshops for youth and adults (year round – beginning in October and ending September 30th) – with the capacity to serve at least one thousand (1,000) youths and adults annually.	\$130	1500	\$195,000	Average cost per person charged for a workshop
2. Twenty (20) internships – on a semester basis with five (5) in the Fall, five (5) in the Winter, five (5) in the Spring, and five (5) in the Summer – with the capacity to serve a minimum of twenty (20) students annually.	\$500	20	\$10,000	Cost for instruction/training for intern; currently offering up to 20 internships
3. Outreach classes at Montgomery County Schools (year round – beginning in October and ending September 30th) – with the capacity to serve a minimum of five hundred (500) students annually.	\$100	500	\$50,000	Cost of teaching artists and supplies
4. Outreach classes at a minimum of eight (8) community organizations selected by Tenant, in its sole discretion (year round – beginning in October and ending September 30th) – with the capacity to serve a minimum of two hundred and fifty (250) youths and adults annually.	\$150	250	\$37,500	Cost of teaching artists and supplies

(06)

(1)

5. Eight (8) free artist lectures: two (2) in the Fall, two (2) in the Winter, two (2) in the Spring, and two (2) in the Summer – provided by eight (8) separate artists with a target audience of eighty (80) invitees to each artist lecture.	\$25	1600	\$45,000	Average cost per person and cost for the Artistic Director's time
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6. Twelve (12) exhibitions (One (1) per month beginning in September) – featuring the work of at least one hundred (100) separate artists with a target audience of four hundred (400) persons per exhibition.	\$15	4800	\$72,000	Price per person to attend exhibition
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7. Eight (8) artist residencies: two (2) in the Fall, two (2) in the Winter, two (2) in the Spring, and two (2) in the Summer.	\$500	8	\$4,000	Cost for Artist Residencies
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Community Programs - Services in partnership with MCDPL

1. Use of Tenant's gallery space once a year for a Montgomery County Public Libraries ("MCPL") sponsored event.		TBD	\$3,792	One Day/Evening Event in 3,792 SF of facility; \$1 p/SF
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2. Provision of a year round media production program in the Silver Spring Library for teens which will teach them how to produce their own artwork, books, and multimedia using the software and computers available in the Silver Spring Library.			\$5,000	Staff and contracted personnel time to manage project
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3. Up to four (4) one-to-one and one half-hour programs a year which will be held in the Silver Spring Library (unless an alternative location is mutually agreed upon by MCPL and Tenant) for an inclusive audience of children ages 5 through 12 with a bookmaking, papermaking, typography, and/or art subject matter. Tenant's current More Than Words or Paper Arts Alive programs are examples of programs that might be considered.

\$10,000

Estimated cost to produce each program is \$2,500

4. One (1) one-to-one and one half-hour program each year which will be held in the Silver Spring Library (unless an alternative location is mutually agreed upon by MCPL and Tenant) for children ages 5-7 with a bookmaking, papermaking, typography and/or art subject matter.

\$2,500

Estimated cost to produce the program is \$2,500

5. One (1) one-to-one and one half-hour program each year which will be held in the Silver Spring Library (unless an alternative location is mutually agreed upon by MCPL and Tenant) for upper elementary age children (ages 12-13) with a bookmaking, papermaking, typography, and/or art subject matter.

\$2,500

Estimated cost to produce the program is \$2,500

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6. Up to four (4) two to three hour programs each year which will be held in the Silver Spring Library (unless an alternative location is mutually agreed upon by MCPL and Tenant) for teens ages 11-18 (or more narrowly defined age groups) with digital technology and video technology subject matter (for example how to create videos, photo projects, online magazines. etc.) or other mutually agreed to topics. Subjects covered in Tenant's current Y.E.S. or Summer Teen Arts Institute may be examples of program topics that could be offered.

\$10,000 Estimated cost to produce each program is \$2,500

7. Up to two (2) two hour programs for adults which will be held in the Silver Spring Library (unless an alternative location is mutually agreed upon by MCPL and Tenant). Programs may be requested for months with major Library or community events (i.e. BookFest in October or Library Lover's Month in February).

\$5,000 Estimated cost to produce each program is \$2,500

TOTAL \$452,292

20

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