

MEMORANDUM

April 1, 2014

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

FROM: Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Property Disposition – Lease of Space in New Silver Spring Library to Pyramid Atlantic**

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 (©1-3). 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.

This memo provides background information on this proposed lease, including joint HHS and GO Committee's comments from the October 10, 2013 session on the proposed material terms. It then provides a summary of the Executive's response and Council staff recommendations.

1. Background

On October 7, 2013, the Executive transmitted the material terms for leasing space in the new Silver Spring Library to Pyramid Atlantic. (©12-16)

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 (©14). 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 ©15.

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.

On October 10, 2013 the joint HHS and GO Committee held a worksession to discuss the recommended material terms. The joint Committee discussed the County’s need to obtain right-of-way on Ripley Street, concern that the dedication of this right-of-way was not a part of the terms of the lease, the lack of requirements for programs to include County artists in exhibits, internships, and artist-in-residence programs, and the requirement that Pyramid Atlantic pay all utilities (as this is different from the treatment of other arts organizations.)

The Council forwarded comments, questions, and information requests to the Executive on October 30, 2013 (©9-11)

2. Executive’s Response to Council Comments and Questions

On March 25, 2014, the Council received the Executive’s responses to the October 2013 questions (©4-8); please note that the response references a map which will be available at the joint Committee worksession. It is similar to the map at ©21.

In regard to the Ripley Street right-of-way the Executive says:

- Based on information provided by Jose Dominguez (Executive Director, Pyramid Atlantic), Robin Salomon (Pyramid Atlantic Board of Directors), and Harvey Maisel (Contract Purchaser), the Contract Purchaser is responsible for making decisions related to the sale or disposition of any property until October 2014 after which the transfer of property and sale will be completed between Pyramid Atlantic and Mr. Maisel.
- 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 need for road redevelopment.

- Mr. Maisel permitted the County to conduct an inspection of the property in January 2014 which resulted in a report indicating that 19½ feet of front footage and an additional amount of the property covering a portion of the building at 8230 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. Mr. Maisel agreed to respond to the cost allocations made in the inspection report after March 21, 2014. (Council staff notes that a written request from the County for access to the property was made to Mr. Dominguez and copied to Mr. Maisel in October 2013.)
- In response to the question as to why the right-of-way is not addressed in the terms of the lease of the library space, the Executive says that by the time 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. Mr. Dominguez advised the County that while there were earlier discussions about the right-of-way needed, Pyramid Atlantic 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.

In regard to reporting on the number of County residents that are exhibitors, interns, and artists-in residence, the Executive says:

- 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.

In regard to whether the Executive is going to require all arts organizations to pay utilities as required in the terms with Pyramid Atlantic, the Executive says:

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

3. Council Staff Comments and Recommendations

While the Executive and the Council have discussed the advantages of having arts and cultural activities in downtown Silver Spring and included space in the Program of Requirements for the new Silver Spring Library for such activities, **Council staff has concluded that the current material terms for the lease with Pyramid Atlantic are problematic and that the joint Committee should recommend the Council disapprove the recommended DNFN or extend its time for consideration.**

Reasons for Disapproving the DNFN based on the Current Material Terms.

1. It is clear that there has been discussion for several years about the need for right-of-way on Ripley Street. The Council approved a FY14 CIP project to complete the sidewalk and road

improvements (©20-21). The PDF says that “The proposed improvement of Ripley Street is shown in the Silver Spring Central Business District and Vicinity Sector Plan, Approved and Adopted 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.” The Council asked why the acquisition of the right-of-way was not addressed in the terms of the lease, indicating that Councilmembers expected there would be resolution of this issue as a part of the transaction.

2. While the recommended material terms are based on a RFP, that RFP was issued by the Executive, not the Council. If the Council does not agree with the material terms of the proposed lease it may disapprove the DNFN regardless of whether the solicitation asked for the right-of-way.
3. 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. However, the October 7, 2013 memo then goes on to say that it is difficult to quantify the dollar value of the services and programs (©15). The Executive is proposing this disposition as a full market value transaction. Council staff believes that there is insufficient information to conclude that this is true. While the Council can waive the requirement that the Executive dispose of the property in a full market value transaction, Council staff is also concerned about the lack of certainty and reporting requirements on how many County residents will be served and so does not recommend that a below market transaction be authorized based on the current material terms.
4. If the expectation was that part of the reason to abate the \$421,000 in annual value was that the County would be able to acquire the needed right-of-way within the costs approved in the CIP project (which includes \$325,000 for land acquisition). There is no certainty that this will happen. This again begs the question of whether this is a full market value transaction.

Reasons for Extending the Time for Consideration

Council staff understands that there is a desire to have Pyramid Atlantic move into the new Silver Spring Library so it may continue to add to arts opportunities available to residents and visitors to Silver Spring and enhance the Central Business District by providing another arts destination. However, the right-of-way issue should be resolved and the material terms should be appropriate for the value of the newly constructed space that will be provided.

Council staff believes that one potential way to address the outstanding issue is to ask the Contract Purchaser (to whom Pyramid Atlantic has given authority for the right-of-way transaction) to agree in writing to negotiate a friendly condemnation of the property that will not exceed the funding in the approved CIP project. This would also address the potential that Pyramid Atlantic, as the property owner until at least October 2014, might be a party in an adversarial proceeding with the County regarding the right-of-way. Another possibility would be for the Contract Purchaser to agree to a quick-take process that would allow the County to move forward with the right-of-way improvements and then determine the value of the right-of-way either through settlement or condemnation.

However, Council staff also recognizes that the property disposition process, much like the process for Executive regulations, calls for the joint Committee to ask the Executive to revise the material terms and so the Executive would have to agree to such an approach.

The basis in the property disposition law for an extension of the time for consideration is that the Council does not have sufficient information to complete a decision. Council staff believes this applies for three reasons:

1. The appraisal for the cost of land acquisition and demolition and reconstruction of part of the current Pyramid Atlantic building that is required for the right-of-way has not yet been completed and made available to Council. Therefore the Council does not know what the Executive believes the full cost of the right-of-way is and whether the cost fits with the approved CIP project.
2. The Council does not have sufficient information on the value of programs and services to determine whether it agrees with the Executive's recommendation that the lease is a full market value transaction.
3. The Council does not have sufficient information to determine what the material terms would be if Pyramid Atlantic were to compensate the County for some or all of the cost of the right-of-way through rent, assuming that the right-of-way was expected to be a part of the overall transaction.

If the joint Committee recommends extending the time for consideration, the Council President should inform the County Executive as soon as possible (and must within 30 days) and Council staff recommends the Council schedule the resolution to extend for its April 22 session.

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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
MAR 25 AM 8:53



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.



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

Ramona Bell-Pearson
Ramona Bell-Pearson
Assistant Chief Administrative Officer

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

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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Isiah Leggett
County Executive

MEMORANDUM

March 25, 2014

RECEIVED
MONTGOMERY COUNTY
CORPORAL

2014 MAR 25 AM 8:53

TO: Craig Rice
Council President

FROM: 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.



Craig Rice, President

March 25, 2014

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- 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.

- 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, 2013 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.

Pyramid Atlantic
October 30, 2013
Page 3

- 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
Page 5

- 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



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 *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.

Ripley Street (P501403)

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

Date Last Modified 5/3/13
 Required Adequate Public Facility No
 Relocation Impact None
 Status Final Design Stage

	Total	Thru FY12	Rem FY12	Total 6 Years	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	Beyond 6 Yrs
EXPENDITURE SCHEDULE (\$000s)											
Planning, Design and Supervision	67	0	0	67	0	47	20	0	0	0	0
Land	325	0	0	325	0	0	325	0	0	0	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	385	0	0	385	0	0	385	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	777	0	0	777	0	47	730	0	0	0	0

FUNDING SCHEDULE (\$000s)											
G.O. Bonds	777	0	0	777	0	47	730	0	0	0	0
Total	777	0	0	777	0	47	730	0	0	0	0

OPERATING BUDGET IMPACT (\$000s)											
Energy				3	0	0	0	1	1	1	
Maintenance				3	0	0	0	1	1	1	
Net Impact				6	0	0	0	2	2	2	

APPROPRIATION AND EXPENDITURE DATA (000s)

Appropriation Request	FY 14	777
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		0
Expenditure / Encumbrances		0
Unencumbered Balance		0

Date First Appropriation	FY 14	
First Cost Estimate		
Current Scope	FY 14	777
Last FY's Cost Estimate		0

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' 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 the Ripley Street will be implemented through the subdivision process if and when the property to the south redevelops.

Estimated Schedule

The design is estimated to start in FY14 and right-of-way (ROW) 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 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 the 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

