

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2002 Legislative Session

Bill No. CB-7-2002

Chapter No. 1

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Members Shapiro, Bailey, Wilson, Scott, Russell and Hendershot

Co-Sponsors _____

Date of Introduction February 19, 2002

BILL

1 AN ACT concerning

2 Sale-Leaseback of County Real Property
3 (Accokeek Library—South County)

4 For the purpose of authorizing the sale-leaseback of County-owned real property for the
5 construction of a new South County library in Accokeek.

6 WHEREAS, Prince George’s County, Maryland (the “County”) has acquired
7 approximately 2.84 acres of land located at Livingston Road in Accokeek (the “Land”) for the
8 construction of a one-story, approximately 15,000 square foot library, which project is identified
9 in the County’s 2002-2007 Capital Improvement Program as the Accokeek Library-South
10 County project (hereinafter referred to as “Accokeek Library”); and

11 WHEREAS, the Land was included in the 2001 Inventory of County-Owned Real Property
12 and Improvements which was approved by CB-57-2001 and is more particularly identified in
13 Attachment A which is attached hereto and incorporated by reference; and

14 WHEREAS, The Keystone Group, Inc., a Texas corporation (“Keystone”), has partnered
15 with certain architectural, construction, financial and legal services entities in order to provide
16 “turn-key” development, financing and construction of schools and other public facilities for a
17 number of local governments; and

18 WHEREAS, after a thorough briefing and presentation to the County Council in July, 2001,
19 the County Executive entered into a Turn-Key Pilot Project Agreement with Keystone to test the
20 use of innovative “turn-key” methods (including sale-leaseback, lease-leaseback, and design-
21 build) to ensure the timely and efficient completion of certain planned construction and

1 renovation projects in the County’s 2002-2007 Capital Improvement Program budget; and

2 WHEREAS, the County and Keystone have negotiated a term sheet (attached hereto as
3 Attachment B and incorporated by reference, the “Term Sheet”) that contemplates a sale-
4 leaseback for Accokeek Library; Accokeek Library is the first project to be developed under this
5 pilot program, and pursuant to the contemplated transactions, Keystone-partnered entities will
6 purchase the Land for no more than \$304,000, construct and partially equip the Accokeek
7 Library according to the County’s plans and specifications for a guaranteed maximum price, and
8 lease the Land and the Accokeek Library (collectively, the “Project”) to the County for
9 approximately 25 years following completion of construction; and

10 WHEREAS, the principal documentation contemplated by the Term Sheet includes
11 (i) a Master Real Property Lease/Purchase Agreement (the “Master Agreement”) relating to all
12 projects that the County determines to develop, renovate or construct under the pilot program,
13 and (ii) a Facility Lease (the “Facility Lease”) relating specifically to the construction, partial
14 equipping, and occupancy of the Accokeek Library; and

15 WHEREAS, the County’s obligation to make all payments provided for in the Master
16 Agreement and the Facility Lease will be subject to annual appropriation of sufficient funds for
17 such purposes; and

18 WHEREAS, in order to obtain the funds necessary to finance the acquisition and
19 construction and certain equipment costs for the Project, the lessor under the Master Agreement
20 and the Facility Lease will mortgage its fee simple interest in the Project and will assign its right,
21 title and interest in the Project, the Master Agreement, the Facility Lease and the County’s lease
22 payments to a corporate trustee that will offer participation interests to sophisticated investors in
23 the stream of lease payments payable by the County; and

24 WHEREAS, it is anticipated that the interest payable on such participation interests will be
25 excludable from gross income of the holders thereof for federal income tax purposes and the
26 County will covenant not to take any action or to omit to take any action that will adversely
27 affect the tax-exempt status of the interest component on such participation interests; and

28 WHEREAS, if the County makes all lease payments and other payments provided for in the
29 Master Agreement and the Facility Lease, at the end of the term of the Facility Lease (or earlier,
30 if the County exercises its option to prepay the lease payments in whole), fee simple title to the
31 Project, including the Land, will be transferred by the lessor to the County; and

1 WHEREAS, the County is authorized to enter into the contemplated transactions with
2 County Council approval under the enumerated express powers granted to and conferred upon
3 the County under Article 25A, Section 5(B) of the Annotated Code of Maryland, as amended;
4 and

5 WHEREAS, in connection with the contemplated transactions, it is not necessary for the
6 County to retain a fee simple interest in the Land in order to use the Land for a public purpose of
7 the County; and

8 WHEREAS, the County Executive has determined that the contemplated transactions are in
9 the County's best interest in that they will serve the public purpose of providing needed library
10 services to residents in the Accokeek area, will expedite the delivery of the Project for a
11 guaranteed maximum price, and will minimize the County's financial burden of initial funding of
12 the Project; and

13 WHEREAS, the County Executive requests that the County Council authorize the County
14 Executive or his duly authorized designee to take the actions necessary to effectuate and
15 consummate the transactions contemplated in the recitals to this Act and the Term Sheet; now,
16 therefore,

17 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
18 Maryland that, the recitals to this Act are incorporated by reference herein and deemed a
19 substantive part of this Act, and terms used in this Act shall have the meanings given to such
20 terms in the recitals hereto, unless otherwise defined herein.

21 SECTION 2. BE IT FURTHER ENACTED that the County Executive or his duly
22 authorized designee, on behalf of the County, is hereby authorized to prepare or cause to be
23 prepared, negotiate, approve, complete, execute and deliver any and all documents deemed
24 necessary or desirable in connection with the transactions contemplated in the recitals to this Act
25 and the Term Sheet, including, without limitation, the deed, the Master Agreement, the Facility
26 Lease, and necessary tax and use certifications; provided that, the provisions of such documents
27 shall not differ materially from the terms outlined in the recitals to this Act and the Term Sheet
28 (although the County Executive or his duly authorized designee may agree to any changes to the
29 prepayment provisions that are in the best interests of the County); and provided further, that (i)
30 the aggregate principal component of the lease payments payable under the Facility Lease shall
31 not exceed (A) \$3,976,000 plus, (B) if required, the amount necessary to fund a lease payment

1 reserve fund, sized within the limitations of the Internal Revenue Code of 1986, as amended,
 2 plus (C) any necessary increase in the capitalized interest to be funded over the amount of
 3 capitalized interest reflected in the Term Sheet due to an increase in the final interest rate over
 4 the assumed interest rate of 5.75% used in the Term Sheet, plus (D) any necessary increase in the
 5 amounts of the lessor’s fee and the placement fee over the amounts of such fees reflected in the
 6 Term Sheet due to an increase in the aggregate principal component of the lease payments
 7 payable under the Facility Lease as determined in accordance with this Section 2 (so long as the
 8 lessor’s fee does not exceed 1.0% and the placement fee does not exceed 1.5% of such final
 9 aggregate principal component), plus (E) any necessary increase over the contingency and
 10 rounding amount reflected in the Term Sheet due to an increase in the aggregate principal
 11 component of the lease payments payable under the Facility Lease as determined in accordance
 12 with this Section 2, and plus (F) any necessary increase over the deposit to the project fund
 13 reflected in the Term Sheet in order that the project fund may be adequately net funded based on
 14 then current investment rates, and (ii) the rate at which the interest component of the lease
 15 payments payable under the Facility Lease is calculated shall not exceed seven percent (7.00%)
 16 per annum.

17 SECTION 3. BE IT FURTHER ENACTED that Keystone shall make reasonable efforts to
 18 promote the County’s policy of assistance to minority business enterprises on projects covered
 19 by the Master Agreement.

20 SECTION 4. BE IT FURTHER ENACTED that the appropriate officials and employees of
 21 the County are hereby authorized and directed, on behalf of the County, to take all such actions
 22 and to prepare or cause to be prepared, negotiate, approve, complete, execute and deliver any and
 23 all closing documents, certificates or instruments deemed necessary or desirable in connection
 24 with the transactions contemplated in the recitals to this Act and the Term Sheet.

25 SECTION 5. BE IT FURTHER ENACTED that the County Executive or his duly
 26 authorized designee is hereby authorized to appoint a “Lessee Representative” for purposes of
 27 the Master Agreement and the Facility Lease and any related documents and such Lessee
 28 Representative is hereby authorized and empowered to make all such determinations and to take
 29 all such actions provided for by or of the Lessee Representative in the Master Agreement, the
 30 Facility Lease and any related documents.

31 SECTION 6. BE IT FURTHER ENACTED that, subsequent to the original execution and

1 delivery of the Master Agreement and the Facility Lease, the County Executive or his duly
2 authorized designee, on behalf of the County, is hereby authorized and empowered to prepare or
3 cause to be prepared, negotiate, approve, complete, execute and deliver any amendments,
4 modifications or supplements to the Master Agreement, the Facility Lease or any of the other
5 principal documents deemed necessary or desirable in order to effectuate the transactions
6 contemplated in the recitals to this Act and the Term Sheet, provided that, any such amendment,
7 modification or supplement shall not be materially adverse to the interests of the County.

8 SECTION 7. BE IT FURTHER ENACTED that the County Executive or his duly
9 authorized designee, on behalf of the County, is hereby authorized to prepare or cause to be
10 prepared, negotiate, approve, complete, execute and deliver any and all documents with any
11 other parties deemed necessary or desirable to effectuate the use and occupancy of or access to
12 the Project, including without limitation, right-of-way, easement, or parking agreements.

13 SECTION 8. BE IT FURTHER ENACTED that the appropriate officials of the County are
14 hereby authorized and directed to prepare or provide for the preparation of, and the publication
15 of, any notices required by Article 25A, Section 5(B) of the Annotated Code of Maryland, as
16 amended.

17 SECTION 9. BE IT FURTHER ENACTED that the Chief Administrative Officer shall
18 provide an analysis of the implications of prevailing hours and wages in “turn-key” projects and
19 shall consult with labor officials regarding wages and hours applicable to this project and other
20 projects of this type.

21 SECTION 10. BE IT FURTHER ENACTED that the provisions of this Act shall be
22 liberally construed in order to effectuate and consummate the transactions contemplated by the
23 recitals to this Act and the Term Sheet.

24 SECTION 11. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
25 calendar days after it becomes law.

Adopted this 12th day of March, 2002.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Peter A. Shapiro
Chair

ATTEST:

Redis C. Floyd
Acting Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Wayne K. Curry
County Executive

Attachment B available in hard copy only

ATTACHMENT A
PROPERTY DESCRIPTION

Map 9-D

MNCPPC OCC-ID:	2520, 2625
Property Description:	Tax Map 151, Grid F-4, Parcels 254, 267, 205, 255
Location:	Livingston Road
Tax Account No.:	05-0388041; 05-0385955; 05-0412049, 05-0377028
Date of Acquisition:	1999, 2000
Acquisition Price:	\$303,893
Proposed Sale Price:	Not more than \$304,000
Area:	2.84 acres
Disposition:	Not more than \$304,000
Zoning:	RR
Real Estate File No.	140-10-18