

Request for City Council Committee Action from the Department of Community Planning and Economic Development - CPED

Date: September 28, 2010
To: Council Member Lisa Goodman, Chair
Community Development Committee

Subject: Bond refunding and reissuance of unsecured bond debt for the West River Commons Project (Gateway Real Estate, L.L.C. Project)

Recommendation: By resolution, authorize the issuance, sale and delivery of subordinate multifamily housing refund revenue notes, Series 2010; approving the form of and authorizing the execution and delivery of the Series 2010 notes, and related documents; Providing for the security, rights, and remedies with respect to the Series 2010 Notes; and Granting approval for certain other actions with respect thereto necessary to complete this transaction.

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Approved by: Thomas Streitz, Director of Housing Policy & Dev.	_____
Presenters in Committee: Wesley J. Butler	

Reviews

Permanent Review Committee (PRC): Approval ___ Date _____
Policy Review Group (PRG): Approval ___ Date _____

Financial Impact

- No financial impact
- Action requires an appropriation increase to the Capital Budget _____ or Operating Budget _____
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Action is within the Business Plan
- Action requires a change to the Business Plan
- Other financial impact
- Request provided to the Finance Department when provided to the Committee Coordinator

Supporting Information

West River Commons at 4610 East Lake Street is owned and operated by Gateway Real Estate, LLC, a Minnesota limited liability company. West River Commons is mixed-use/affordable rental property comprised of 53 condo-style apartment homes located along the west riverbank of the Mississippi River. Of the 53 rental units, 12 apartments are reserved for the occupancy by persons and families of low to very low income.

Original Financing

In 2002, \$8,200,000.00 of tax-exempt multi-family housing revenue bonds were issued by the City of Minneapolis (Series 2002 Variable Rate Bonds) to Gateway Real Estate, LLC to finance the acquisition and construction of a three-four story 53

multifamily rental housing facility. Twelve units are designated for households at or below 50% of the area median income. The Series 2002 bonds are backed by a Letter of Credit issued by La Salle Bank, now held by Bank of America.

In 2009 the Borrower (Gateway Real Estate LLC) was informed that due to the current financial climate, Bank of America had no plans to renew the Letter of Credit used to back the Series 2002 Bonds upon the expiration of the Letter of Credit, which is scheduled to take place in October 2010. As a result, the Borrower began working on securing a new replacement Letter of Credit through Wells Fargo Bank N.A. The anticipated Letter of Credit amount is \$6,260,000.00.

As of October 1, 2010 the outstanding bond amount will be \$7,900,000.

Action Requested

Due to the fact that the new Letter of Credit, to be issued by Wells Fargo, is an amount smaller than the amount of the outstanding Series 2002 Bonds, the Borrower requests that the City issue Subordinate Housing Refunding Revenue Notes Series 2010 in an aggregate principal amount not to exceed \$1,600,000 to sophisticated investors. The Borrower further requests the proceeds from the sale of the Notes be loaned to the Borrower for the purpose of redemption and prepayment of a portion of the Series 2002 Bonds. The Notes will be subordinate to the Series 2002 Bonds, secured by the personal guarantees of the members of the borrower's development team and payable solely from surplus cash of the project. The City of Minneapolis will retain no liability for repayment of the bonds.

On or before the schedule expiration date of the current Letter of Credit, Borrower will redeem with equity any of the Series 2002 Bonds not backed by the Wells Fargo Letter of Credit and prepaid by the proceeds from the sale of the Notes which will be loaned to the Borrower.

Attached: Bond Resolution

**RESOLUTION
of the
City of Minneapolis**

AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF SUBORDINATE MULTIFAMILY HOUSING REFUNDING REVENUE NOTES (GATEWAY REAL ESTATE, L.L.C. PROJECT), SERIES 2010; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE SERIES 2010 NOTES, AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE SERIES 2010 NOTES; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

1. STATUTORY AUTHORIZATION. The City of Minneapolis, Minnesota (the "City"), is a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, and is authorized by Minnesota Statutes, Chapter 462C, as amended (the "Act"), to carry out the public purposes described in the Act by issuing revenue bonds or other revenue obligations to finance or refinance multifamily housing developments located within the City. In the issuance of the City's revenue bonds and other revenue obligations and in the making of a loan to finance a multifamily housing development, the City may exercise, within its corporate limits, any of the powers that the Minnesota Housing Finance Agency may exercise under Minnesota Statutes, Chapter 462A, as amended, without limitation under the provisions of Minnesota Statutes, Chapter 475, as amended, including the power to issue refunding obligations and to apply the proceeds derived from the sale of the refunding obligations to redeem and prepay the bonds or other obligations to be refunded.

2. THE COMPANY AND THE FACILITY. On October 22, 2002, the City issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Gateway Real Estate, L.L.C. Project), Series 2002 (the "Series 2002 Bonds"), in the original aggregate principal amount of \$8,200,000, for the benefit of Gateway Real Estate, L.L.C., a Minnesota limited liability company (the "Company"). The Series 2002 Bonds are currently outstanding in the principal amount of \$7,900,000. The Series 2002 Bonds were issued pursuant to the terms of Resolution No. 2002R-299, adopted by the City Council of the City on September 13, 2002, and approved by the Mayor of the City on September 18, 2002, and an Indenture of Trust, dated as of October 1, 2002 (the "Indenture"), between the City and U.S. Bank National Association (formerly LaSalle Bank National Association), as trustee (the "Trustee"). The proceeds derived from the sale of the Series 2002 Bonds were loaned to the Company pursuant to the terms of a Loan Agreement, dated as of October 1, 2002 (the "Loan Agreement"), between the City and the Company. The proceeds of the loan were applied by the Company to finance the acquisition, construction, and equipping of a 53-unit multifamily housing facility located at 4610 East Lake Street in the City (the "Project").

3. SERIES 2010 NOTES. The payment of the principal of and interest on the Series 2002 Bonds is secured by an irrevocable, direct-pay letter of credit of Bank of America. Bank of America has informed the Company that it does not intend to renew its letter of credit upon the expiration of the letter of credit. As a result, the Company has obtained a commitment from Wells Fargo Bank, National Association (the "Bank") to issue a replacement letter of credit (the "Letter of Credit") in substitution for the existing Bank of America letter of credit. The Letter of Credit will secure only \$6,260,000 of the principal amount of the outstanding Series 2002 Bonds. The Company has requested that the City issue a series of Subordinate Multifamily Housing Refunding Revenue Notes (Gateway Real Estate, L.L.C. Project), Series 2010 (the "Series 2010 Notes"), in an original aggregate principal amount not to exceed \$1,640,000, and loan the proceeds derived from the sale of the Series 2010 Notes to the Company pursuant to the terms of a Note Agreement, to be dated on or after October 1, 2010 (the "Note Agreement"), between the City and the Company. The Company will apply the proceeds of the loan to be made pursuant to the terms of the Note Agreement to the redemption and prepayment of the portion of the Series 2002 Bonds that will not be secured by the new Letter of Credit. The Series 2010 Notes will be subordinate to the Series 2002 Bonds and will be secured by the obligations of the Company under the Note Agreement and a Repayment Guaranty, to be dated on or after October 1, 2010 (the "Guaranty"), to be executed and delivered by each member of the Company.

4. OBLIGATIONS OF THE CITY. The City acknowledges, finds, determines, and declares that the issuance of the Series 2010 Notes is being issued pursuant to the Act.. In authorizing the issuance of the Series 2010 Notes for the refinancing of the Project and related costs, the City's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by maintaining multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act. The Series 2010 Notes will be issued pursuant to this resolution and the Series 2010 Notes and the interest on the Series 2010 Notes: (i) shall be payable solely from the revenues pledged therefor under the Note Agreement; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Note Agreement; and (v) shall not constitute a general or moral obligation of the City.

5. THE SERIES 2010 NOTES. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2010 Notes in the maximum aggregate principal amount not to exceed \$1,640,000. The Series 2010 Notes shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Series 2010 Notes, in the form now on file with the City, with the amendments referenced herein. The City hereby authorizes the Series 2010 Notes to be issued, in whole or in part, as "tax-exempt bonds," the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes. The Series 2010 Notes shall be special, limited obligations of the City payable solely from the revenues provided by the Company pursuant to the Note Agreement. The City Council of the City hereby authorizes and directs the Finance Officer to execute the Series 2010

Notes and hereby provides that the Series 2010 Notes shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Series 2010 Notes and the City as set forth therein.

All of the provisions of the Series 2010 Notes, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The form of the Series 2010 Notes now on file with the City is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Series 2010 Notes, the stated maturities of the Series 2010 Notes, the interest rates on the Series 2010 Notes, and the terms of redemption of the Series 2010 Notes) as the Finance Officer of the City, in his discretion, shall determine. The execution of the Series 2010 Notes with the manual or facsimile signature of the Finance Officer and the delivery of the Series 2010 Notes by the City shall be conclusive evidence of such determination.

6. THE NOTE AGREEMENT. The Finance Officer is hereby authorized and directed to execute and deliver the Note Agreement. All of the provisions of the Note Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Note Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determinations. Except for certain reserved rights, the interests of the City in the Note Agreement will be assigned to the owners of the Series 2010 Notes pursuant to the terms of an Assignment of Loan Agreement, dated on or after October 1, 2010 (the "Assignment"), between the City, the Company, and the holders of the Series 2010 Notes. The Assignment shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Finance Officer, in his discretion, shall determine.

7. THE REGULATORY AGREEMENT AND FIRST AMENDMENT TO REGULATORY AGREEMENT. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), and to ensure compliance with certain restrictions imposed by the City, a Regulatory Agreement, dated as of October 1, 2002 (the "Original Regulatory Agreement"), was executed by the Company and the Trustee, and delivered in conjunction with the issuance of the Series 2002 Bonds. To ensure continuing compliance with such restrictions, there is hereby authorized and directed to be executed and delivered a First Amendment to Regulatory Agreement, dated on or after October 1, 2010 (the "First Amendment to Regulatory Agreement"), between the Company and the Trustee. The First Amendment to Regulatory Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Finance Officer, in his discretion, shall determine.

8. OTHER CITY DOCUMENTS. The Finance Officer is hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Series 2010 Notes, including various certificates of the City, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, with respect to the Series 2010 Notes, a certificate as to arbitrage and rebate, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Series 2010 Notes. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel to prepare, execute, and deliver its approving legal opinions with respect to the Series 2010 Notes.

9. DISCLOSURE DOCUMENTS. The City will not participate in the preparation of an official statement or other disclosure document relating to the offer and sale of the Series 2010 Notes (the "Disclosure Document"), and will make no independent investigation with respect to the information contained in the Disclosure Document, including the appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information.

10. SUBSEQUENT AMENDMENTS. On any date subsequent to the date of issuance of the Series 2010 Notes, the Finance Officer is hereby authorized to execute and deliver any amendments or supplements to any of the documents referred to in this resolution if, after review by bond counsel, the Finance Officer determines that the execution and delivery of such amendment or supplement is in the interests of the City. The Finance Officer may impose any terms or conditions on his execution and delivery of any such amendment or supplement as the Finance Officer deems appropriate.

11. LIMITATIONS OF LIABILITY. No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council of the City, or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Council of the City nor any officer or employee executing the Series 2010 Notes shall be personally liable on the Series 2010 Notes or be subject to any personal liability or accountability by reason of the issuance thereof. No provision, covenant, or agreement contained in the aforementioned documents, the Series 2010 Notes, or in any other document relating to the Series 2010 Notes, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Note Agreement which are to be applied to the payment of the Series 2010 Notes, as provided therein.

Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City, and any holders of the Series 2010 Notes issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned

documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holders from time to time of the Series 2010 Notes issued under the provisions of this resolution.

12. SEVERABILITY. In case any one or more of the provisions of this resolution, other than the provisions limiting the liability of the City, or of the aforementioned documents, or of the Series 2010 Notes issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Series 2010 Notes, but this resolution, the aforementioned documents, and the Series 2010 Notes shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

13. VALIDITY OF THE SERIES 2010 NOTES. The Series 2010 Notes, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Series 2010 Notes and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Series 2010 Notes, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

14. ADDITIONAL ACTIONS. The officers of the City, bond counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Series 2010 Notes, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Series 2010 Notes, the aforementioned documents, and this resolution.

15. DESIGNATION AS PROGRAM BONDS. The Series 2010 Notes are hereby designated "Program Bonds" and are determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 1997R-402 of the City adopted December 12, 1997.

16. EFFECTIVE DATE. This resolution shall take effect and be in force from and after its approval and publication. Pursuant to Chapter 4, Section 9, of the Charter of the City, only the title of this resolution and a summary of this resolution conforming to Minnesota Statutes, Section 331A.01, subdivision 10, shall be published in the official paper of the City.