

Request for MCDA Board of Commissioners Action from the Department of Community Planning & Economic Development - CPED

Date: October 20, 2009
To: Council Member Lisa Goodman, Community Development Committee
Referral to: MCDA Board of Commissioners

Subject: A Public Hearing and Request for Preliminary and Final Approval of up to \$4,000,000 in 501(c)(3) Bank Qualified Bank Direct Tax- exempt Minneapolis Community Development Agency Revenue Bonds for the Minnesota Shubert Theater, LLC. (Artspace Projects, Inc.)

Recommendation: City Council Recommendation: Adopt the attached Resolution, giving Preliminary and Final Approval to the issuance of up to \$4,000,000 in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Minneapolis Community Development Agency Revenue Bonds, Series 2009 for the Minnesota Shubert Theater, LLC. (Artspace Projects, Inc.)

MCDA Board Recommendation: Forward this report to the Minneapolis Community Development Agency Board of Commissioners for their approval and adoption of the attached Resolution giving Preliminary and Final Approval of up to \$4,000,000 in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Revenue Bonds, Series 2009, for the Minnesota Shubert Theater, LLC.(Artspace Projects, Inc.)

Previous Directives: None

Prepared by: Charles Curtis 673-5069
Approved by: Charles T. Lutz, Deputy Director CPED _____
Catherine A. Polasky, Director, Economic Development _____
Presenters in Committee: Charles Curtis

Reviews

- Permanent Review Committee (PRC): Approval N.A. Date _____

Financial Impact

- Other financial impact: The issuance of revenue bonds for the Shubert Theater will generate revenue bond administrative fees of approximately \$8,750 a year that are used to support the small business assistance programs of the City of Minneapolis.

Community Impact

- Neighborhood Notification: The Downtown West representatives have been notified of this project.
- City Goals: This proposed project promotes the City's 5 year goal for an Enriched Environment by increasing opportunities in the arts.
- Sustainability Targets: N.A.
- Comprehensive Plan: The proposed project is in compliance with the policies of the Minneapolis Plan.
- Zoning Code: The proposed project is in compliance.
- Living Wage/Business Subsidy Agreement Yes ____ No N.A. All conduit revenue bonds allocated under State Statute Chapter 474A, refunding bonds and 501 (c)(3) bonds are exempt from the State Act. This project is not subject to the City Living Wage Ordinance, since this is a historic preservation project.
- Job Linkage Yes ____ No Under discussion
- Other: N.A.

Supporting Information

Project Location & Description:

The Minnesota Shubert Theater, LLC bond applicant will establish The Minnesota Shubert Performing Arts & Education Center at the facility located at 508 and 516 Hennepin Avenue. The rehabilitated building and added atrium will become a performing arts and education center, with related supporting space. The facility will be connected to the Hennepin Center for the Arts, which provides a home for many non-profit organizations, including a number of leading dance companies and schools.

Type of Financing:

Industrial Development Bonds (commonly known as IDB's or tax-exempt revenue bonds) have been used by the City of Minneapolis since 1972 to finance the capital needs of many small companies and organizations. In 2003, the City of Minneapolis developed a financing program to provide cost-effective tax-exempt financing for small 501 (c)(3) nonprofit organizations. Tax-exempt revenue bonds have often not been a practical financing option for small organizations in the past, due to the high costs of borrowing. Providing a streamlined application and documentation process has resulted in lower borrowing costs for nonprofits.

Within the existing federal tax code, there is the ability to issue bank qualified debt that local lenders can purchase and take advantage of the partial tax deduction on the interest earnings. With the bank qualified status, banks are allowed to deduct 80% of their "carrying costs" (interest paid on borrowed funds, like deposits, to purchase bonds) associated with buying tax-exempt bonds. Banks, therefore, can get the dual benefits of tax-exemption and deductibility of carrying costs. This translates into lower borrowing costs for the nonprofit organizations that work with a city (issuer) on the issuance of bank qualified bank direct bonds. Tax-exempt revenue bonds are underwritten and collateralized just like any conventional bank loan. The bank approval process for the revenue bond program does not differ from conventional financing.

Under new Recovery Act language, the MCDA is not limited to the prior \$10 million per year issuance restriction and has the ability to issue more of the bank qualified bank direct tax-exempt revenue bonds in 2009 and 2010.

The bonds for the Minnesota Shubert Theater, LLC (Minnesota Shubert Performing Arts & Education Center) will be underwritten and purchased by U.S. Bank.

The total cost for the proposed project, since its beginning in 1999, is approximately \$40 million. The proposed project has raised almost the entire amount from both public and private sources. The Bank Qualified Bank Direct Bonds will provide the final bridge piece of the funding for the actual rehabilitation of the facility.

The Minnesota Shubert Theater, LLC (Artspace Projects, Inc.) organization will then continue collecting various pledges and seeking additional funds to provide final and permanent facility funding.

Present Employment: None for Shubert Theater Project facility

New Employment: 38 FTE for Shubert Theater Project facility

Assessor's Estimate Annual Tax Increase: Tax-exempt facility.

Affirmative Action Compliance: The Shubert Theater is in compliance and has completed its Affirmative Action Plan.

CITY IRB POLICIES:

Job Component	Minimum standard of one (1) job per 1,000 square feet of building area. Minnesota Shubert Theater, LLC: In Compliance
Property Improvements	For private activity IRBs consisting of industrial/manufacturing projects, no more than 25% of the bond proceeds may be used for land and acquisition. If purchasing an existing building, an amount equal to at least 15% of the acquisition cost must be spent on rehabilitation expenditures. This IRB policy does not apply to nonprofit organizations issuing 501 (c)(3) tax-exempt revenue bonds. Minnesota Shubert Theater, LLC: In compliance.
Development Standards	Compliance with the Land Use Plan of the City's Comprehensive Plan. Minnesota Shubert Theater, LLC: In compliance.
Equipment Financing	Limited to companies that create or preserve a significant number of jobs, and the equipment financed must be sufficiently secured. No more than 10% of the bond proceeds may be used to finance movable equipment not constituting a fixture. Minnesota Shubert Theater, LLC: N.A.
Restaurant/Bank	IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in a CPED Redevelopment Area. No more than 25% of the bond proceeds can be used to finance retail food and beverage establishments, automobile dealerships or recreation or entertainment

facilities.

Minnesota Shubert Theater, LLC: N.A.

Tax-exempt Institution

Refinancing is permitted when new jobs are created or when a significant number of jobs is preserved; any interest cost savings must directly reduce patient costs.

Minnesota Shubert Theater, LLC: N.A.

IRB CAP:

The project is not subject to the volume cap, in that the project is exempt from income tax under Internal Revenue Code Section 501(c)(3) for its exempt purposes and is classified there - under as a non-profit organization.

BOND COUNSEL:

Lindquist & Vennum P.L.L.P

UNDERWRITER:

U.S. Bank

Resolution
of the
City of Minneapolis

Giving preliminary and final approval to and authorizing the financing of a project on behalf of Minnesota Shubert Theater, LLC (the "Borrower"), and authorizing the issuance of a revenue bond or bonds of the Minneapolis Community Development Agency therefor.

WHEREAS, pursuant to Laws of Minnesota 1980, Chapter 595, as amended ("Chapter 595"), the City Council of the City of Minneapolis, Minnesota (the "City") established the Minneapolis Community Development Agency (the "Agency") and granted certain powers and duties to the Agency; and

WHEREAS, pursuant to such granted powers, the Agency has been authorized to issue revenue obligations for various purposes; and

WHEREAS, it has been proposed that the Agency issue a revenue notes in an amount not to exceed \$4,000,000 (the "Notes") to finance the acquisition, renovation, construction, furnishing and equipping of the existing Shubert Theater and an adjacent entrance atrium to be used for a performing arts and education center and other related and ancillary functions (the "Project"); and

WHEREAS, the property included in the Project is owned by the Borrower, which is a Minnesota limited liability company whose sole member is Artspace Project, Inc., a nonprofit corporation; and

WHEREAS, the City expects to make a CDBG grant with respect to the Project and there is on file in the office of the City Clerk a form of Disbursing Agreement to be entered into among the City, the Agency, the Borrower and the providers of funding for the Project (the "Disbursing Agreement");

WHEREAS, the Agency expects to give final approval to the issuance of the Notes by a resolution to be adopted on the date hereof; and

WHEREAS, the Notes shall bear interest at a variable interest rate, shall have a final maturity date not later than December 31, 2013, and shall have such other terms as required or permitted by the Agency's resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

That the City Council hereby gives preliminary and final approval to the issuance by the Agency of the Notes in a principal amount not to exceed \$4,000,000 for the purpose of financing the Project.

Be It Further Resolved that the Disbursing Agreement is hereby approved and shall be executed by the authorized officers of the City in substantially the form on file, but with all such changes therein, not inconsistent with law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof.

Be it Further Resolved that the Notes are hereby designated as "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 97R-402 of the City adopted December 12, 1997.

RESOLUTION

of the

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

Resolution providing for the issuance and sale of up to \$4,000,000 revenue notes (Shubert Theater Project), Series 2009 and authorizing execution and delivery of various documents

RESOLVED BY THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY (THE "ISSUER"):

1. Authority. The Issuer is, by the Constitution and Laws of the State of Minnesota, including Sections 469.152 to 469.165, Minnesota Statutes, as amended (the "Act"), authorized to issue and sell its revenue bonds for the purpose of financing the cost of acquisition and construction of authorized projects and to enter into contracts necessary or convenient in the exercise of the powers granted by the Act.
2. Authorization of Notes. The Issuer hereby determines that it is necessary and expedient to authorize, and the Issuer does hereby authorize, the issuance and sale of the Issuer's Revenue Notes (Shubert Theater Project), Series 2009 (the "Notes") pursuant to the Act to provide money to be loaned to Minnesota Shubert Theater, LLC, a Minnesota limited liability company (the "Borrower") in the aggregate principal amount of up to Four Million Dollars (\$4,000,000) to finance costs of acquisition, renovation, construction, furnishing and equipping of the existing Shubert Theater and an adjacent entrance atrium that will serve as the lobby for the theater to be used for a performing arts and education center and other related and ancillary functions (the "Project") to be owned and operated by the Borrower. The City Council of the City of Minneapolis (the "City") has approved the Project and the issuance by the Agency of the Notes.
3. Documents Presented. Forms of the following documents relating to the Notes and the Project have been prepared or reviewed by bond counsel, and submitted to the Issuer and are now on file in the office of the Issuer:
 - (a) Loan Agreement (the "Loan Agreement"), dated as of November 1, 2009, between the Issuer and the Borrower, whereby the Issuer agrees to make a loan of the proceeds of the Notes to the Borrower to finance the Project and the Borrower agrees to pay amounts sufficient to provide for the full and prompt payment of the principal of, premium, if any, and interest on the Notes;
 - (b) Pledge Agreement (the "Pledge Agreement"), dated as of November 1, 2009, between the Issuer and U.S. Bank National Association (the "Purchaser"), pledging the revenues to be derived from the Loan Agreement as security for the Notes, and setting forth proposed recitals, covenants and agreements relating thereto;
 - (c) Notes;
 - (d) Disbursing Agreement (the "Disbursing Agreement") among the Agency, the City, the Borrower, the Purchaser and the parties providing funding for the Project relating to the disbursement of the proceeds of the Notes and other funds; and
 - (e) Application for approval of the Project to be submitted to the Commissioner of Employment and Economic Development.
4. Findings. It is hereby found, determined and declared that:
 - (a) The Project furthers the purposes and policies of the Act.

(b) The Issuer held a public hearing relating to the Project, and, in the opinion of bond counsel based on representations of the Borrower, the Notes will be qualified Section 501(c)(3) bonds within the meaning of Section 145 of the Internal Revenue Code of 1986, as amended.

(c) The Loan Agreement provides for payments by the Borrower to the Purchaser for the account of the Issuer of such amounts as will be sufficient to pay the principal of and interest on the Notes when due. The Loan Agreement obligates the Borrower to provide for the operation and maintenance of the Project, including adequate insurance, taxes and special assessments. The Loan Agreement further provides for the payment of fees to the Issuer as set forth therein.

(d) The Notes are, and are hereby designated to be, program bonds as defined in Resolution No. 88R of the City Council adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997.

(e) Under the provisions of Section 469.162 of the Act and as provided in the Loan Agreement, the Notes are not to be payable from nor charged upon any funds other than amounts payable pursuant to the Loan Agreement and moneys in the funds and accounts held by the Purchaser which are pledged to the payment thereof; the Issuer is not subject to any liability thereon; no holders of the Notes shall ever have the right to compel the exercise of the taxing power of the Issuer to pay any of the Notes or the interest thereon, nor to enforce payment thereof against any property of the Issuer; the Notes shall never constitute an indebtedness of the Issuer or City, within the meaning of any constitutional, statutory or charter limitation and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers; the Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer or City; and each Note shall recite that the Notes, including interest thereon, shall not constitute nor give rise to a charge against the general credit or taxing powers of the Issuer or City and does not grant to the owner or holder of any Note the right to have the Issuer levy taxes or appropriate any funds for the payment of principal thereof or the interest or premium, if any, thereon and the Note is not a general obligation of the Issuer or City or individual officers or agents thereof.

5. Approval and Execution of Documents. The forms of Loan Agreement, Pledge Agreement, Notes and Disbursing Agreement referred to in paragraph 3 are approved and shall be executed in the name and on behalf of the Issuer by the Executive Director and Finance Officer or the officers authorized to act on behalf of the foregoing officers, in substantially the form on file, but with all such changes therein, not inconsistent with the Act or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof. The Notes shall be executed as provided by the Loan Agreement. The application for approval of the Project shall be submitted to the Commissioner of Employment and Economic Development. The Notes shall contain a recital that they are issued pursuant to the Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance. The Executive Director and Finance Officer are also authorized to execute such other documents as may be necessary to implement the transaction described herein.

6. Certifications. The officers of the Issuer are authorized and directed to prepare and furnish to bond counsel, to the Borrower and to counsel for the Borrower, certified copies of all proceedings and records of the Issuer relating to the Project and the Notes, and such other affidavits and certificates as may be required to show the facts

appearing from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the trust of all statements contained therein.