Request for City Council Committee Action
From the Department of
Community Planning & Economic Development

Date: January 22, 2007

To: Council Member Paul Ostrow, Chair, Ways and Means/Budget Committee

Submitted by: Jonathan Palmer, Empowerment Zone Director, 673-5016

Approved by: Chuck Lutz, CPED Deputy Director _____

Subject: Approve the forgiveness of a $164,000 loan to Siyeza, Inc.

Presenters in Committee: Jonathan Palmer, Empowerment Zone Director, 673-5016

Recommendation:
Approve the Empowerment Zone (EZ) Governance Board recommendation to forgive the $164,000 loan to Siyeza. It employed 33 EZ residents for at least three months and hired a total of 228 EZ residents for 48,009 hours, which is the equivalent of 99 residents hired for at least three months.

Financial Impact
_X_ No financial impact or Action is within current budget.

Background/Supporting Information
On December 13, 2002 the Minneapolis City Council approved a loan in the amount of $164,000 to Siyeza, Inc., a frozen and refrigerated food manufacturing company located at 1000 Humboldt Avenue North. The loan term was five years with no interest or payments accrued until September 2004. The loan was then to accrue interest at 3% annually and be fully amortized over then next two years with final payment due in December 2006.

In May 2004, Destination Products International (DPI) purchased Siyeza and its manufacturing capacity and assets. DPI is a wholesale food distributor based in Ontario Canada with total sales of approximately $150 million. DPI agreed to pay off Siyeza's existing short term debt, while other lenders wrote off the majority of their long term debt. DPI paid a total of $1.65 million. $300,000 cash up front to pay off Siyeza's current liabilities and $1.35 million was in the form of vendor notes due in to Glory Foods, General Mills, Stairstep Foundation and Stairstep Inc.

In order for the agreement to move forward, Siyeza requested that the EZ and City Council agree to forgive the entire $164,000 loan. The EZ Governance Board at its meeting on June 17, 2004 agreed to forgive the loan based on a formula that would forgive $2500 for each EZ resident employed. This meant that the full $164,000 could have been forgiven if sixty six (66) EZ residents obtained full time employment during the next five years. If that did not happen, the EZ was to recover a payment of $50,000 from the $100,000 DPI vendor note (The original 2004 request and subsequent request based on that included an error which referenced this vendor note amount as $400,000, but the actual note was for $100,000, possibly due to downward adjustment) pledged to Stairstep Inc. The vendor

note was payable on December 1, 2009, but was subordinate to all other DPI secured debt. Neither DPI nor Stairstep ever formally assumed the debt. On July 23, 2004, the Minneapolis City Council approved the EZ Governance Board recommendation to forgive the $164,000 loan to Siyeza.

In May 2006, DPI discontinued its operation and has liquidated its assets, due to its inability to generate a profit.

In December 2006, a recommendation was presented to the Ways and Means Committee to forgive the $164,000 loan. The Committee directed Empowerment Zone Staff to work with the City Attorney's Office and Finance Office to evaluate other options besides forgiveness, especially recapture of funds and evaluation of assets.

Empowerment Zone Staff had been working with City Attorney's Office throughout this process, and met with Business Finance Staff to evaluate other possibilities for the facility. Subsequent to the Committee's direction, Empowerment Zone Staff convened a meeting with City Attorney and Finance Office Staff to evaluate this situation.

Evaluation of Potential Actions
In May of 2006, DPI dissolved the business and ceased operations at the plant. There is currently no current income source. Any recapture of funds would have to be from financial assets currently existing, physical assets that could be liquidated, guarantees provided or actions against any entity involved.

Financial Assets
Siyeza ceased operations in 2004. There are no readily identifiable current financial assets that can be appropriated. The original loan was not secured.

Physical Assets
Siyeza liquidated all assets and sold them in 2004. There are no physical assets that can be liquidated. The original loan was not secured.

Guarantees
As part of the Council Action of July 2004, the Empowerment Zone was to secure the $164,000 loan with a $50,000 Vendor Note pledged by Stairstep Inc. until the hiring goals were met. Neither DPI nor Stairstep ever agreed to assume the Siyeza debt. Mr. Babington-Johnson refused to sign the contract amendment which included the vendor note as collateral to secure the loan. This would limit the ability to pursue the $50,000 security. In addition, it is Stairstep's contention that the vendor note has no value since DPI ceased operations and they do not expect any payment from them.

Legal Actions
The only option that would seem available is the pursuit of a lawsuit against individuals or entities involved in this project. The primary entities are: Siyeza, DPI, Stairstep Inc. and Alfred Babbington Johnson, CEO.

Siyeza
Siyeza no longer operates It is unlikely there would be any assets to lien if legal action was pursued.

Alfred Babington-Johnson
There is a promissory note but no mortgage with this contract. The note specifically states that there is no recourse against Mr. Babington-Johnson. There is no merit in filing a lawsuit against Mr. Babington-Johnson.

DPI
DPI did not agree to assume all debt when it acquired Siyeza. There is no document that provides a direction connection between DPI and the existing Siyeza debt. DPI also ceased operations as Siyeza Creative Foods.

Stairstep Inc.
Stairstep Foundation agreed to voluntarily pledge a $50,000 vendor note against this debt as part of the forgiveness procedures of the Council. This commitment has been acknowledged verbally, but never memorialized

Final Recourse
Therefore, and with advice from the City Attorney's office, options available are:

(1) Continue to pursue the Stairstep voluntary assumption of the outstanding EZ debt

(2) Declare the loan in default and sue to recover any unencumbered assets that Siyeza, Inc. may have (this would only be fruitful if there were unencumbered assets). The Secretary of State's website shows Siyeza, Inc. as a current entity, but does not give any indication whether there would be any unencumbered assets. Communication from Mr. Babington-Johnson states that they have not received final financials, therefore, pursuit of this action would most likely involve legal proceedings to gain information just to determine if there are assets that could be sued for. The Finance Department would need these financial before being able to evaluate the feasibility of recovery.

(3) Write-off the outstanding debt.

Recommendation
The Empowerment Zone Governance Board and Staff Recommendations are to forgive this debt for three reasons: Value, Mission and Effort.

In terms of value, this loan is the amount of $164,000. In order to pursue this to a point of discovering if there is even a source of funds for recovery, much less pursuing the legal action involved in recovery, it is the opinion of all Staff involved in analyzing this as well as the Governance Board that cost in staff time would negate the amount of funds that could be recovered. Simply put, from a financial standpoint, it is not worth it to pursue further.

From a mission standpoint, the Governance Board and Staff feel that part of the role of the Empowerment Zone is to take chances on riskier investments for the chance of addressing our mission. Part of the danger is that not all investments will come to fruition; this is just such an investment. We, along with several other entities, took a chance on this and it did not work the way we had hoped. Parties involved understood this risk, and in pursuing this, we would possibly be the only entity that was not accepting this and forgiving the debt.

In the end, Siyeza made a strong effort, and followed though on the spirit of the agreement. It was not specified how long a person would have to be employed, but given the number of individuals hired (228) and equivalency in hours (99 FTEs at 3 months each), this is not a simple matter of not meeting the goals and lends credence to writing this off and taking the lessons learned. The goal was to employ 66 EZ residents for at least three months from 2002 to 2009. Although Siyeza employed only 33 EZ residents for at least three months, a total of 228 EZ residents were hired for 48,009 hours, which is the equivalent of three months of employment for 99 people. Total wages and taxes paid to EZ residents were $502,225 (Note there are minor differences in figures from the December 18, 2006 request based on a thorough rechecking of all numbers)

Siyeza hired a total of 653 employees and paid $1.4 million in salaries and taxes, which were also factors taken into consideration for the loan forgiveness. Staff does not see merit in pursuing this further. The company is no longer in operation and it made a significant effort to employ EZ and Minneapolis residents.

The Empowerment Zone recommends the City Council uphold the EZ Governance Board decision to forgive the $164,000 loan to Siyeza.