



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

Date: February 3, 2004

To: Council Member Lisa Goodman, Community Development Cmte
Council Member Barbara Johnson, Ways and Means/Budget Cmte

Prepared by: Mark Winkelhake, Sr. Finance Analyst, Phone 612-673-5105
Presenter in Committee: Mark Winkelhake

Approved by: Jack Kryst, Director, Development Finance _____

Subject: Revised Note Resolution for the Village at St. Anthony Falls

RECOMMENDATION: Adopt the attached resolution relating to the issuance of Taxable Tax Increment Revenue Refunding Notes.

Previous Directives: On June 5, 2000 the City Council and MCDA Board approved the establishment of the East Hennepin & University Redevelopment Project Area and Tax Increment Financing District, and authorized the execution of a redevelopment contract based on approved business terms. On October 16, 2000 the City Council and MCDA Board authorized the issuance of tax increment debt for the project, including amendments to the MCDA's 2000 Appropriation Resolution. On May 16, 2003 the City Council and MCDA Board approved a modification to the minimum assessment agreement for Block 3. On December 29, 2003 the City Council and MCDA Board approved a resolution, and other technical matters, thereby authorizing the refinancing of the tax increment revenue debt for the project. While there have been many other directives with regards to this project, those listed above are the most relevant to the subject of this report.

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact

Ward: 5

Neighborhood Notification: Not applicable

City Goals: Foster the development and preservation of a mix of housing types that is available, affordable, meets current needs, and promotes future growth.

Comprehensive Plan: Not applicable

Zoning Code: Not applicable

Living Wage/Job Linkage: Not applicable

Other: Not applicable

Background

On December 29, 2003 the City Council adopted Resolution 2003R-622, which authorized the issuance of tax increment revenue refunding (refinancing) bonds and notes for the Village at St. Anthony Falls Project. The resolution also provided the form, terms, pledge of revenues, and findings, covenants, and directions relating to the issuance of these refunding bonds and notes. The report and resolution had previously been reviewed and approved (via consent agenda) by the Community Development Committee and the Ways & Means Committee on December 16, 2003 and December 22, 2003, respectively.

Subsequent to this approval, it has been determined by City Bond Counsel (Kennedy & Graven, Chartered) that additional terms and provisions relating to the issuance of the refunding notes need further City Council approval. These terms and provisions, which were not specified in the prior resolution, include items such as the establishment of a debt service fund for the refunding notes, providing for registration and book entry terms for the refunding notes, authorizing a commitment to provide for continuing disclosure for the refunding notes, approval of purchase contracts for the refunding notes (which are now on file with the City), and other minor technical additions.

Relating to the tax increment financing of public improvements related to the Village at St. Anthony Falls multifamily housing development located in the East Hennepin & University Tax Increment Financing District; authorizing the issuance of Taxable Tax Increment Revenue Refunding Notes (Village at St. Anthony Falls Project), Series 2004; and providing the form, terms, pledge of revenues, and findings, covenants, and directions relating to the issuance of such obligations

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

SECTION 1. BACKGROUND

1.01. The Minneapolis Community Development Agency (the “Agency”) and the City of Minneapolis (the “City”) established the East Hennepin & University Tax Increment Financing District (the “TIF District”) pursuant to authority granted by Minnesota Statutes, Sections 469.174-469.179, as amended (the “Tax Increment Act”), within the East Hennepin & University Redevelopment Project Area (the “Redevelopment Project”), and adopted a tax increment financing plan for the purpose of financing certain improvements within the TIF District. In order to provide for the redevelopment of the Redevelopment Project and the TIF District and, specifically, to provide for the redevelopment of a three-block site located in the TIF District on the east bank of the Mississippi River at the intersection of Hennepin Avenue East and University Avenue East, referred to generally as the Village at St. Anthony Falls Project (the “Project”), the Agency entered into a Contract for Private Redevelopment, dated July 18, 2000, as amended (the “Contract”), between the Agency and Fire Barn Associates, LLC and its assignees (collectively, the “Redeveloper”). The Project is comprised, in part, of forty-eight (48) market-rate townhouses located on the block designated as Block 2 (the “Block 2 Improvements”) and one hundred and twenty-one (121) market-rate lofts and brownstone units located on the block designated as Block 3 (the “Block 3 Improvements”).

1.02. Pursuant to Section 469.178 of the Tax Increment Act, the Agency is authorized to issue and sell its bonds or notes for the purpose of financing public development costs in a redevelopment projects and to pledge tax increment revenues derived from a tax increment financing district established within the redevelopment project to the payment of the principal of and interest on such obligations.

1.03. On October 27, 2000, the Board of Commissioners of the Agency adopted Resolution No. 2000-2336M of the Agency (the “Note Resolution”), which provided for the issuance and sale of its tax increment revenue notes. Pursuant to the terms of the Note Resolution, the Agency issued its Block 2 Taxable Tax Increment Revenue Note (The Village at St. Anthony Falls Project), Series 2001 (the “Block 2 Note”), in the principal amount of \$2,737,000, dated as of March 20, 2001, payable solely from a portion of the proceeds of the Block 2 Note and from tax increment revenues generated from Block 2. Pursuant to the terms of the Note Resolution, the Agency issued its Block 3 Taxable Tax Increment Revenue Notes (The Village at St. Anthony Falls Project), Series 2001 (the “Block 3 Note”), in the original stated principal amount of \$8,786,000, but initially funded in the amount of \$6,739,000, and later

funded in the amount of an additional \$630,000 for a total funded amount of \$7,369,000. The Block 3 Notes are payable solely from a portion of the proceeds of the Block 3 Notes and from tax increment revenues generated from Block 3. The Block 2 Note and the Block 3 Notes are hereinafter referred to collectively as the "Series 2001 Notes."

1.04. Pursuant to the terms of the Contract, the Agency agreed to refund the Series 2001 Notes with tax-exempt tax increment revenue bonds when the conditions set forth in the Contract for the issuance of such revenue bonds have been satisfied. Such conditions have been satisfied for the Block 2 Note and a portion of the Block 3 Note. The City Council has previously authorized the issuance of revenue bonds (the "Bonds") to refinance the Block 2 Note and a portion of the Block 2 Note. The portion of the Block 3 Notes not refunded with the Bonds is required to be refunded with a series of revenue notes.

SECTION 2. ISSUANCE OF THE NOTES

2.01. In order to refund the outstanding principal amount of the Block 3 Notes not refunded with the Bonds, there is hereby authorized to be issued by the City the Notes, as hereinafter defined.

2.02. The City Council hereby authorizes the issuance of tax increment revenue notes to be designated as the "Taxable Tax Increment Revenue Refunding Notes (Village at St. Anthony Project), Series 2004 (the "Notes"), in a principal amount not to exceed \$4,400,000. The Notes shall be issued on such date and upon the terms and conditions determined by the Finance Officer. The Notes may be designated such other name or names as determined to be appropriate by the Finance Officer. The Notes shall be issued in one or more series as the Finance Officer may determine, and shall be assigned a separate series designation determined by the Finance Officer for each series issued by the City. The Notes shall be issued as obligations the interest on which is includable in gross income for federal and State of Minnesota income tax purposes. This authorization to issue the Notes is effective without any additional action of the City Council and shall be undertaken by the Finance Officer on such date or dates and upon the terms and conditions deemed reasonable by the Finance Officer. The City Council hereby authorizes the sale of the Notes with the assistance of a placement agent hereinafter selected by the Finance Officer (the "Placement Agent"). The City shall sell the Notes to the purchasers to whom the Placement Agent has placed the Notes (the "Purchasers") in accordance with the terms of a Private Placement Agreement between the City and the Purchasers (the "Private Placement Agreement").

2.03. There have been presented to the City Council forms of the following documents: (i) the form of the Notes; (ii) the Guaranty Agreement (the "Guaranty") to be executed by the guarantor or guarantors approved by the Finance Officer (the "Guarantor"); (iii) the Private Placement Agreement; and (iv) the Bond Purchase Agreement between the City and Dougherty & Company LLC (the "Bond Purchase Agreement") setting forth the terms and conditions for the purchase of the Bonds. The form of the Notes, the Guaranty, the Private Placement Agreement, and the Bond Purchase Agreement are hereby approved in substantially the forms on file with the City on the date hereof, subject to such changes not inconsistent with this Resolution and applicable law that are approved by the Finance Officer of the City.

2.04. The Notes shall have the maturities, interest rate provisions, shall be dated, numbered, and issued in such denominations, shall be subject to mandatory and optional redemptions and prepayment prior to maturity, shall be executed, sealed, and authenticated in such manner, shall be in such form, and shall have such other details and provisions as are prescribed in the form of the Notes and in the Private Placement Agreement. The form of the Notes is hereby approved, subject to such changes not inconsistent with this Resolution and applicable law, and subject to such changes that are approved by the Finance Officer. Without limiting the generality of the foregoing, the Finance Officer is authorized to approve the original aggregate principal amount of each series of Notes to be issued under the terms of

this Resolution (subject to the maximum aggregate principal amount for all series authorized by this Resolution), to establish the terms of redemption, the principal amounts subject to redemption, and the dates of redemption of the Notes, and to approve other changes to the other terms of the Notes which are deemed by the Finance Officer to be in the best interests of the City. The issuance and delivery of the Notes shall be conclusive evidence that the Finance Officer has approved the terms and provisions of the Notes in accordance with the authority granted by this Resolution. The proceeds derived from the sale of the Notes, and the earnings derived from the investment of such proceeds, shall be held, transferred, expended, and invested in accordance with determinations of the Finance Officer.

2.05. The Notes shall be secured by the terms of this Resolution, the Notes, the Assessment Agreement, and the Guaranty and shall be payable solely from Available Tax Increments (as defined in the Notes) that are expressly pledged to the payment of the Notes pursuant to the terms of the Notes, or from payments made by the Guarantor pursuant to the terms of the Guaranty, or from proceeds of refunding notes or bonds which may be issued by the City..

2.06. It is hereby found, determined and declared that the issuance and sale of the Notes, the execution and delivery by the City of the Notes, Private Placement Agreement, and the Assessment Agreement (the "City Documents"), and the performance of all covenants and agreements of the City contained in the City Documents, and of all other acts required under the Constitution and laws of the State of Minnesota to make the Notes the valid and binding special obligations of the City enforceable in accordance with their terms, are authorized by applicable Minnesota law, including, without limitation, the Tax Increment Act and this Resolution.

2.07. Under the provisions of the Tax Increment Act, and as provided under the terms of the Notes, the Notes are not to be payable from or chargeable against any funds other than the revenues and assets pledged to the payment thereof; the City shall not be subject to any liability thereon other than from such revenues and assets pledged thereto; no holder of any Notes shall ever have the right to compel any exercise by the City of its taxing powers (other than as contemplated by the pledge of tax increment revenues under the terms of the Notes) to pay the principal of, premium, if any, and interest on the Notes, or to enforce payment thereof against any property of the City other than the property expressly pledged thereto; the Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City other than the revenues or assets expressly pledged thereto; the Notes shall recite that the Notes are issued without a pledge of the general or moral obligation of the City, and that the Notes, including interest thereon, are payable solely from the revenues and assets pledged to the payment thereof; and the Notes shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation of indebtedness.

SECTION 3. TERMS, EXECUTION, AND DELIVERY

3.01. The Notes shall be issued in the form of one or more typewritten notes numbered from R-1 upwards. The Notes shall be issuable only in fully registered form. The Notes shall be payable as to principal upon presentation and surrender thereof at the office of the Finance Officer, in Minneapolis, Minnesota, as initial Note registrar and paying agent, or at the offices of such other successor paying agents as the City may hereafter designate, provided that if the Notes are then issued and outstanding, such successorship shall be effective only upon sixty (60) days' mailed notice to the registered owners at their respective registered addresses. The Finance Officer shall keep at its office a bond register in which the Finance Officer shall provide for the registration of ownership of the Notes and the registration of transfers and exchanges of the Notes.

3.02. Upon surrender for transfer of any Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, and upon satisfaction of any limitations on transfer set forth in the Note, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the Notes shall not be transferred to any person, other than the Redeveloper or any guarantor of the principal and interest payments on the Note, unless the Agency has been provided with an opinion of counsel or a certificate of the transferor, in a form satisfactory to the Agency, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date. The Note surrendered upon any transfer shall be promptly cancelled by the Finance Officer. When a Note is presented to the Finance Officer for transfer, the Finance Officer may refuse to transfer the same until it is satisfied that the endorsement on such Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

3.03. The Finance Officer may treat the person in whose name any Note is at any time registered in the bond register as the absolute owner of the Note, whether the Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Note to the extent of the sum or sums so paid. For every transfer or exchange of any Note, the Finance Officer may impose a charge upon the owner thereof sufficient to reimburse the Finance Officer for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

3.04. In case any Note shall become mutilated or be lost, stolen, or destroyed, the Finance Officer shall deliver a new Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated Note or in lieu of and in substitution for such Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Finance Officer in connection therewith; and, in the case the Note lost, stolen, or destroyed, upon filing with the Finance Officer of evidence satisfactory to it that such Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Finance Officer an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the City and the Finance Officer shall be named as indemnified parties. The Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen, or destroyed Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Note prior to payment.

3.05. In the event the Notes are to be prepaid in whole or in part, notice thereof will be given by the Finance Officer by mailing a copy of the redemption notice by first class mail (postage prepaid) not more than sixty (60) and not less than thirty (30) days prior to the date fixed for redemption to the registered owners of the Notes at the addresses shown on the registration books kept by the Finance Officer. Failure to give notice by mail to any registered owner, any defect therein, will not affect the validity of any proceeding for the redemption of the Notes. The Notes so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for such redemption are on deposit with the place of payment at that time.

3.06. The Notes shall be prepared under the direction of the Finance Officer and shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor, City Clerk, and Finance Officer. In case any officer whose signature shall appear on the Notes shall cease to be such officer before the delivery of the Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. The Notes shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Note has been duly executed by the manual signature of the Finance Officer or an authorized representative of the Finance Officer. Certificates of authentication on different Notes certificates need not be signed by the same representative. The executed certificate of authentication on each Note shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Note has been so executed and authenticated, it shall be delivered by the Finance Officer to the owner upon payment of the purchase price therefor, and the owner shall not be obligated to see to the application of the purchase price.

3.07. The Finance Officer may elect to provide a book entry system for registering the ownership interests in the Notes. If the Finance Officer so elects, The Depository Trust Company (“DTC”) may be engaged to act as securities depository for the Notes. If the Finance Officer elects to provide a book entry system for registering the ownership interests in the Notes and engages DTC to act as securities depository for the Notes, the terms of engagement between the City and DTC shall prevail over any inconsistent provisions of this Resolution.

SECTION 4. SECURITY PROVISIONS

4.01. The City hereby pledges to the payment of the principal of and interest on the Notes all Available Tax Increment, as defined in the Notes. Available Tax Increment shall be deposited in the Debt Service Fund (defined below) in accordance with Section 4.03 hereof and applied to payment of the principal of and interest on the Notes in accordance with the terms of the Notes.

4.02. The proceeds derived from the sale of the Notes shall be applied to the redemption and prepayment of the Block 3 Notes that are not to be redeemed and prepaid with the proceeds of the Bonds. The Finance Officer may elect to deposit a portion of the proceeds derived from the sale of the Notes in the Debt Service Fund (defined below) and applied to the payment of a portion of the interest to accrue on the Notes.

4.03. So long as the Notes are outstanding and any principal thereof or interest thereon remains unpaid, the City shall maintain a separate Debt Service Fund (the “Debt Service Fund”) to be used for no purpose other than the payment of the principal of and interest on the Notes. The City appropriates and irrevocably pledges to the Debt Service Fund: (a) any proceeds of the Notes that the Finance Officer elects to deposit in the Debt Service Fund to pay interest on the Notes; (b) Available Tax Increment pledged pursuant to Section 4.01 of this Resolution; (c) all earnings derived from the investment of money held in the Debt Service Fund; and (d) any other funds appropriated to the Debt Service Fund. The Debt Service Fund and all money deposited therein pursuant to this Resolution are hereby pledged to the payment of principal of and interest on the Notes. Any payments received by the City under any Guaranty are also pledged to the Debt Service Fund and shall be deposited therein upon receipt to be applied in the same manner as Available Tax Increment.

4.04. All amounts held in the Debt Service Fund may be invested in accordance with the provisions of Minnesota Statutes, Chapter 118A, governing the investment of funds of governmental entities.

SECTION 5. CERTIFICATION OF PROCEEDINGS AND OTHER MATTERS

5.01. The Finance Officer and other officers, agents, and employees of the City are hereby authorized and directed to prepare and furnish to the registered owners of the Notes certified copies of all proceedings and records of the City, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the Notes as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

5.02. In the event that the Finance Officer determines that the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule") are applicable to the Notes, the Finance Officer shall prepare and deliver to the registered owners of the Notes a continuing disclosure certificate setting forth the continuing disclosure obligations of the City under the Rule and the manner by which the City will satisfy its obligations under the Rule.

5.03. In the event that the Finance Officer determines that the preparation of a disclosure document is necessary or appropriate in conjunction with the offer and sale of the Notes, the Finance Officer shall prepare or cause to be prepared a private placement memorandum or other disclosure document relating to the Notes and shall authorize the use of such document by the Placement Agent.

5.04. The Finance Officer shall execute and deliver to the purchasers of the Notes a certificate as to absence of material litigation and a certificate as to payment for and delivery of the Notes. The Finance Officer shall also deliver to the purchasers of the Notes a signed approving legal opinion of Kennedy & Graven, Chartered, as to the validity and enforceability of the Notes.

5.05. This Resolution shall take effect and be in force from and after its approval and publication.

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