



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

Date: July 11, 2006

To: Council Member Lisa Goodman, Community Development Committee
Council Member Paul Ostrow, Ways & Means Budget/Committee

Subject: MacPhail Center for Music

Recommendation:

1. Adopt the attached resolution establishing the governmental program to be achieved through construction and operation of MacPhail Center for Music; and
2. Accept the \$5,000,000 grant from the State of Minnesota for the MacPhail Center for Music project; and
3. Authorize the appropriate city officials to execute:
 - a. A grant agreement with the State of Minnesota;
 - b. A use/lease agreement with MacPhail Center for Music;
 - c. A ground lease with MacPhail Center for Music;
 - d. A master disbursement agreement with a title company and other funders; and
 - e. And such other documents as necessary to implement the project, all in accordance with the terms herein; and
4. Amend the 2006 General Appropriation Resolution to increase the appropriation in Fund SMN-890-8933 (state grants and loan programs) by \$5,000,000.

Previous Directives:

1. On February 14, 2004, the MCDA Board of Commissioners authorized an extension of MacPhail Center for Music's 100 percent funding requirement deadline to June 30, 2006, and associated contract modifications.
2. On December 14, 2001, the City Council and MCDA Board of Commissioners approved the Parcel C redevelopment and TIF plans.
3. Also on December 14, 2001, the Board of Commissioners approved redevelopment contract terms and authorized the land sale to CSM Investors II, Inc.

Prepared by: Carrie Flack, Senior Project Coordinator **Phone:** 612-673-5010

Approved by:

Chuck Lutz, Deputy Director CPED _____

Mike Christenson, Director of Economic Development _____

Permanent Review Committee (PRC) Approval Not Applicable

Note: To determine if applicable see <http://insite/finance/purchasing/permanent-review-committee-overview.asp>

Presenter in Committee: Carrie Flack, Senior Project Coordinator

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- 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.
- Business Plan: Action is within the plan. Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department’s finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Neighborhood Notification: The MacPhail Center for Music project has been presented on several occasions to the Downtown Minneapolis Neighborhood Association and the Industry Square Project Committee and both organizations support the project.

City Goals: The proposed project meets the following goals: Preserve and enhance our environmental, economic and social realms to promote a sustainable Minneapolis. Promote public, community and private partnerships to address disparities and to support strong healthy families and communities.

Comprehensive Plan: The proposed project meets the following policies: 1.5 Minneapolis will promote neighborhood based arts and activities; 6.5 Minneapolis will continue to promote the economic and creative vitality of arts activities based in the City, both as a regional center for art with an international presence as well as a unique arts environment that responds to local specialty interests and 6.6 Minneapolis will continue to support the role of arts in tourism and community pride.

Zoning Code: The City Planning Commission has approved the actions needed for the MacPhail project.

Other:

Background/Supporting Information:

In its 2006 legislative session, the State of Minnesota approved a grant of \$5,000,000 for the design and construction of the MacPhail Center for Music project. This grant was appropriated to the City and as a result of state grant requirements the City must own or ground lease the

building. MacPhail Center for Music will ground lease the property to the City and in turn the City will enter into a use/lease agreement under which MacPhail will construct the building and be responsible for the operation and management of MacPhail Center for Music. This report outlines the actions that must be taken at this time relative to the State grant in order to allow the project to move forward.

Progress continues on implementation of the project. All formal zoning and planning approvals have been granted, and the construction plans are in the process of being approved. Final approval of the sale of 501(c)(3) tax exempt revenue bonds is being proposed in a separate report being considered on July 11, 2006, and the bonds are expected to close at the same time the agreements related to the State grant are executed on August 1, 2006. Construction will start in full force soon thereafter and will take about 12 months to complete with an estimated opening of September 2007.

Proposed Resolution and Grant, Ground Lease, Use and Disbursement Agreements

The \$5,000,000 State grant will be funded by State G.O. bond proceeds and must be used by a public entity to construct a publicly-owned facility that meets a public purpose. The attached resolution formally establishes the public purpose and governmental program to be achieved by the City as recipient of the State grant and outlines the statutory authority under which the City will undertake this project.

Pursuant to an agreement between the State of Minnesota Department of Education and the City, the State will provide the grant to the City in accordance with the terms outlined in Exhibit A. After acquisition of the property from the City, MacPhail will convey/ground lease the property back to the City for \$1.00. MacPhail will construct the building using the State grant, the 501(c)(3) tax exempt revenue bond proceeds and equity. These funds will be disbursed in accordance with the customary disbursement agreement agreed upon.

It should be noted that, as with all projects funded by a State construction grant, the City will have certain obligations as the public recipient of the grant. This includes being responsible for monitoring the construction of the project and assuring there are sufficient funds available for the completion. A team of staff people has reviewed and approved the proposed financing plan, and MacPhail will be required to supply at bond sale closing all funds needed to fully fund the project. Payment and performance bonds and insurance will also be required to mitigate construction period risks, and disbursements will be made by a title company that will assure that there are always sufficient funds to cover project costs. Under the use/lease agreement described below, the City may impose upon MacPhail any remedies imposed upon the City by the State if there is a default due to MacPhail.

The City and MacPhail will enter into a use/lease agreement as outlined in Exhibit C under which the actual long-term operation of the completed music education center will be the responsibility of MacPhail. Under this agreement, MacPhail will operate the music education center and related/ancillary uses, will pay all operating costs and must submit for the City's approval annual summaries of the previous year's program, revenues and expenses and proposed future budgets and programs to assure that the project is financially stable and is meeting the intended public purposes.

In the event that MacPhail is not able to operate the music education center and went into default under the use/lease agreement, the City would have some risks related to the on-going operation of the music education center to comply with the grant agreement. These risks would include a responsibility to work with MacPhail and a consultant to seek ways to cure operational problems and interim property management costs after the use/lease agreement was terminated. The City could elect to seek an alternate operator, and if the City eventually were to find that the project is no longer needed or usable for the program, the City could seek the State's permission to sell its leasehold interests, with sales proceeds to be distributed as outlined in Exhibit C. Provisions will be included in the ground lease and or use/lease agreements to moderate these risks. As part of the finance plan review, the City staff also reviewed MacPhail's initial projections of operating revenues and expenses to verify that the project appears financially viable.

RESOLUTION
of the
CITY OF MINNEAPOLIS

By _____

Establishing the governmental program to be achieved through construction and operation of MacPhail Center for Music in Minneapolis.

WHEREAS, the City of Minneapolis (the "City") has adopted the *Downtown 2010* plan as a component of the City's Comprehensive Plan (Policy 3.2), and one of the goals set forth in *Downtown 2010* is to strengthen downtown's role as the region's center for arts, entertainment and culture; and

WHEREAS, the City's Comprehensive Plan also includes policies supporting the promotion of the economic and creative vitality of arts activities based in the City (Policy 6.5) and supporting the role of arts in tourism and community pride (Policy 6.6); and

WHEREAS, MacPhail Center for Music has been one of Minneapolis' pre-eminent cultural and educational institutions for over fifty years and is one of the unique amenities and arts institutions that Minneapolis desires to retain, enhance, support and promote; and

WHEREAS, MacPhail Center for Music has an active program to expose Minneapolis and other students to music and musical education and the new center will provide enhanced physical facilities for these educational programs; and

WHEREAS, MacPhail Center for Music has selected a site in the downtown central riverfront for an expanded music center that will achieve the goals of *Downtown 2010* and the City's goals; and

WHEREAS, Minnesota Statutes, sections 469.001-469.047, as amended, authorize the establishment of redevelopment projects to provide for the development and redevelopment of selected areas of the City; and

WHEREAS, On July 25, 1973, the City Council of the City and the Board of the MCDA approved the Industry Square Redevelopment Plan establishing the Industry Square Redevelopment Project; and

WHEREAS, the site selected for the new MacPhail Center for Music is located within the Industry Square Redevelopment Project; and

WHEREAS, the objectives of the Industry Square Redevelopment Plan include supplementing the financial base of the community and accomplishing the goals of the *Mississippi/Minneapolis* report; and

WHEREAS, the *Mississippi/Minneapolis* report identified the Industry Square area as an appropriate location for a cultural center; and

WHEREAS, the proposed new MacPhail Center for Music is expected to generate significant economic benefits in the form of direct and indirect construction spending, increased tourism and direct and indirect spending by patrons of the institution; and

WHEREAS, a 2002 study of the impact of arts estimated that the Minneapolis nonprofit arts industry generates \$269.4 million in economic activity annually, including jobs, household income and revenues to local and state government; and

WHEREAS, the site for the proposed new MacPhail Center for Music is located within a portion of the Industry Square area known as the Historic Mills District, and the *Update to the Historic Mills District Plan* (approved by the City Council in September of 2001) specifically approved the proposed site as a location for commercial development; and

WHEREAS, Minnesota Statutes, section 469.012, authorizes the City to own, hold and improve real estate within its area of operation and to lease real and/or personal property, and Minnesota Statutes, section 469.155 authorizes the City to acquire, construct, hold and finance projects; and

WHEREAS, Minnesota Laws 2006, Chapter 258, Article 1, Section 4, Subdivision 4, authorizes the City to undertake the design, construction and operation of the MacPhail Center for Music; to establish the MacPhail Center for Music as a governmental program providing music education, music therapy, and music education programming in public and private schools and in partnership with other organizations; and to appropriate funds for such purposes; and

WHEREAS, the State of Minnesota has approved a \$5,000,000 grant to the City to design, construct, furnish and equip a new MacPhail Center for Music in the City of Minneapolis; and

WHEREAS, to satisfy conditions of the State grant, the City must own or ground lease the new MacPhail Center for Music, but may enter into a use/lease agreement with MacPhail Center for Music under which it will take on responsibility for the operation of the musical institution; and

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

1. **THAT** the construction, ownership and operation of a new MacPhail Center for Music in the Central Riverfront area will achieve the important public goals of the City identified above.
2. **BE IT FURTHER RESOLVED THAT** the acquisition, construction, ownership, financing, lease and operation of a new MacPhail Center for Music are within the City's authority under Minnesota Statutes, sections 469.001-047, 469.155, Minnesota Session Laws 2006, Chapter 258, Article 1, Section 4, Subdivision 4.
3. **BE IT FURTHER RESOLVED THAT** the governmental program to be achieved by the City's sponsorship of the new MacPhail Center for Music will be to construct, equip and operate a music education center that includes studios, classrooms, and a performance hall, together with education programming, other cultural performances, and related and ancillary uses in the City of Minneapolis, pursuant to which the City expects to support cultural participation and encourage economic development and tourism.
4. **BE IT FURTHER RESOLVED THAT** the City hereby accepts the grant of \$5,000,000 from the State of Minnesota and authorizes the appropriate City officials to execute a grant agreement with the State of Minnesota, a ground lease with MacPhail Center for Music, a master disbursement agreement with the State of Minnesota, MacPhail Center for Music and others, a use/lease agreement with MacPhail Center for Music, and such other documents as necessary to implement the project.
5. **BE IT FURTHER RESOLVED THAT** the City Council delegates to the CPED Director the authority to approve and certify to the State of Minnesota the annual reporting requirements for the MacPhail Center for Music pursuant to the grant agreement and the use/lease agreement.
6. **BE IT FURTHER RESOLVED THAT** this resolution shall be in full force and effect from and after its passage.

RECORD OF CITY COUNCIL VOTE													
Member	Aye	Nay	NV	Abs	Ovrd	Sust	Memberl	Aye	Nay	NV	Abs	Ovrd	Sust
Benson							Lilligren						
Colvin Roy							Ostrow						
Glidden							Remington						
Gordon							Samuels						
Hodges							Schiff						
Hofstede							Goodman, chair						
Johnson													
Vote: NV - Not Voting			Abs - Absent			Ovrd - Vote to Override			Sust - Vote to Sustain				

ADOPTED _____ . _____ **Chairperson** .

APPROVED
NOT APPROVED _____ . _____ **Mayor** .
VETOED

Minneapolis Department of Community Planning
and Economic Development
Crown Roller Mill, 105 Fifth Ave. S.
Minneapolis, MN 55401

EXHIBIT A

TERM SHEET

STATE OF MINNESOTA CONSTRUCTION GRANT TO CITY FOR MACPHAIL PROJECT

Parties:

State Entity – Minnesota Department of Education

Public Entity – City of Minneapolis

Amount – \$5,000,000 (The State may increase or decrease the grant amount if the legislature increases or decreases the approved appropriation.)

Use – Design, construction, equipping and furnishing of Improvements (as defined in the City/CSM Investors II, Inc./MacPhail Redevelopment Contract) that include an approximate 50,000 to 80,000 square foot performing arts facility and music educational center. The Project will include the City's ground lease interest.

Termination – The Project must start no later than the earlier of: a) November 30, 2006 or b) the construction start deadline established in the Redevelopment Contract, as amended from time to time. All funds must be disbursed within five years after the effective date of the grant agreement, or the grant agreement will terminate (unless mutually extended). The grant agreement and its provisions also will terminate at the end of the City's ground lease and upon a sale of the Project approved by the State.

Compliance with state laws and requirements – The City will comply with (and/or cause MacPhail to comply with) all requirements necessitated by State laws and the State constitution, including:

- Repayment of the disbursed grant amount to the State in the event of an uncured event of default. Repayment amount will be 100% of the disbursed grant amount during the first five years after the center opening and will be reduced 1/15 for every year after Year 5 and until year 20. No repayment upon default will be required beginning 20 years after the center opening.
- Adherence with general obligation bond requirements to assure that interest on the State bonds remains exempt from taxes.
- The Facility must be insured.
- A Declaration must be filed against the property that will assure compliance with the terms of the grant agreement.
- If the City determines that the Facility is no longer needed or usable for the Governmental Program and the Finance Commissioner consents, the Project may be sold. It must be sold for "fair market value," and (unless the G.O Compliance Legislation no longer applies to the Project) the net proceeds after sale-related costs used first to repay the State grant and the State will also share in any residual after other obligations (i.e., outstanding debt and a payment to MacPhail for the underlying fee title as provided in the ground lease) are repaid in proportion to its contribution compared to the matching funds contribution.

Use/lease agreement – The City will enter into a use/lease agreement with MacPhail to operate the Governmental Program in the Project, subject to said use/lease agreement being approved by the State and in accordance with State requirements (see Exhibit C).

Design review – The City must submit (or cause MacPhail to submit) the Facility predesign plans and a program plan and cost estimates for State review in accordance with its standard requirements.

Matching funds – The City will document (or cause MacPhail) to document that no less than \$15,000,000 in matching funds from non-State sources is committed and available for the MacPhail

Center for Music to meet the State of Minnesota's requirements - \$14,093,000 from capital campaign pledges and MacPhail assets (that may be replaced on a dollar-for-dollar basis as additional pledges are received) and \$907,000 in funds that will have been expended by MacPhail by the time the grant agreement is signed. The City also will document or cause MacPhail to document that all resources needed to fully fund the land acquisition and completion of the Improvements will be available at closing.

Disbursements – To be made in accordance with the following and the terms of a Master Disbursement Agreement.

- **Draws** – State funds will be made available to the bond trustee either at the beginning of the Project or on a draw by draw basis and will be made available to MacPhail by the bond trustee on a draw by draw basis.
- **Project Costs** – All costs to construct, install, furnish and equip the Improvements, including related design and consultant costs.
- **Documentation prior to disbursement** – Funds to be disbursed upon submission of appropriate documentation, including project completion status, lien waivers and sufficiency of remaining funds.
- **Filing of Declaration** – No State funds will be disbursed until the Declaration is filed against the property.
- **Reimbursement proportions** – Disbursements will be made from MacPhail funding sources, including the \$15,000,000 matching funds and \$5,000,000 State of Minnesota grant funds, and State funds may only be used for qualified capital expenditures that are incurred on or after August 1, 2006.

Other provisions – The agreement will provide for retainage and other security (including a payment and performance bond or other security to assure completion of the Project).

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not materially impact the City's rights, obligations or interests.

EXHIBIT B

TERM SHEET

GROUND LEASE BETWEEN MACPHAIL AND CITY

Parties:

Lessor – MacPhail Center for Music

Lessee – City of Minneapolis

Premises – The property as defined in the City/CSM Investors II, Inc./MacPhail Redevelopment Contract, together with the Improvements (as defined in the Redevelopment Contract) to be constructed thereon. No prior mortgages.

Term – 50 years, which is 125% of the useful life of the Improvements, commencing on the date of execution, which cannot be prematurely cancelled without the prior approval of the Minnesota Department of Education.

Rent - \$0 per year, with MacPhail responsible for all operating, maintenance, taxes, insurance and other costs pursuant to the Lease/Use Agreement to be executed simultaneously with the Ground Lease.

Conditions – The City's obligations under the Ground Lease are contingent upon: concurrent execution of the Construction Grant Agreement by the State and the Lease/Use Agreement by MacPhail; Commissioner of Finance approval of such agreements; receipt of title insurance commitment acceptable to City (with insurance premium to be paid by MacPhail).

Indemnity - MacPhail will agree to indemnify, defend and hold harmless the City from any actions, proceedings or claims, of whatsoever nature, including attorney's fees, arising out of the condition, ownership, use, or operation of the Premises.

Title to improvements - Upon termination of the Ground Lease (e.g., at the end of the 50-year term) or of the City's right to possession of the Premises, the City shall immediately quit and surrender possession of the Premises to MacPhail in its then condition.

Sale or assignment – The City shall not assign or sublet its interest in the Ground Lease or the Premises without the prior written consent of MacPhail and the Commissioner of Finance.

Limitation – There will be no personal liability on the part of City, or its officers, directors, members, employees and agents, to MacPhail with respect to any of the terms, covenants and conditions of the Ground Lease, and MacPhail shall look solely to recovering possession of the Premises in the event of any breach by the City of any of the terms, covenants and conditions of the Ground Lease to be performed by City.

Sale in event of default – If the Use/Lease agreement is terminated as a result of a default by MacPhail and if the eventual result is a decision by the City to sell (with State approval) the City's interest in the Premises, then MacPhail will agree to convey fee title to the Premises to the purchaser of the City's ground lease interest in the Premises. The price to be paid to MacPhail for said underlying fee title will be the lesser of: a) MacPhail's cumulative capital investment in the Premises, and b) the amount of proceeds remaining after the City's sale-related costs, State grant and any outstanding debt have been repaid. The City's sale-related costs will include any interim property management. (Any residual sales proceeds remaining after the payment for fee title will be shared in accordance with the Grant Agreement.)

Other provisions – MacPhail through Lease/Use Agreement will:

- Comply with laws;

- Pay taxes, if any;
- Maintain and insure the Premises; and
- Consent to a leasehold mortgage.

Miscellaneous

- Notices;
- Estoppels; and
- Etc.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not materially impact the City's rights, obligations or interests.

EXHIBIT C

TERM SHEET

LEASE/USE CONTRACT BETWEEN CITY AND MACPHAIL

Parties:

Lessor – City of Minneapolis

Lessee – MacPhail Center for Music

Subject to approval by State

Governmental Program – The City will lease the Premises to MacPhail to construct the Improvements and operate the “Governmental Program,” which is a music education center that includes studios, classrooms, and a performance hall, together with education programming, other cultural performances, and related and ancillary uses in the City of Minneapolis, pursuant to which the City expects to support cultural participation and encourage economic development and tourism. Minnesota Statutes Chapter 469, and Minnesota Session Laws 2006, Chapter 258, Article 1, Section 4, Subdivision 4, provide the City the necessary authority to undertake the program.

Premises – The City’s ground lease interests in the property, plus the improvements to be constructed thereon.

Term – The initial lease term will be 20 years with either: a) one 20-year and one 10-year renewal options, or b) three 10-year renewal options if the City determines by official action that such renewal continues to carry out the Governmental Program.

Rent - \$0 per year, with MacPhail responsible for all operating, maintenance and other costs, including any taxes or special assessments.

Initial Improvements and Funding – MacPhail will build the Improvements (as defined in the Redevelopment Contract) in accordance with the Redevelopment Contract and provide the resources to meet the State match requirement, fully fund the Improvements at closing and secure repayment of the 501(c)(3) tax exempt revenue bonds. The State-required match will include \$15,000,000 in matching funds to meet the State of Minnesota’s requirements - \$14,093,000 from capital campaign pledges and MacPhail assets (that may be replaced on a dollar-for-dollar basis as additional pledges are received) and \$907,000 in funds that will have been expended by MacPhail by the time the grant agreement is signed. The City will provide the State grant funds to MacPhail to cover the appropriate share of the Project cost.

Reporting and oversight – MacPhail must:

- Submit the predesign plans and a program plan and cost estimates for State review in accordance with its standard requirements and make any changes needed for approval.
- After the Facility is completed, submit annual reports: a) certifying that the Premises have been used for a center for music education and ancillary uses, b) summarizing the previous year’s program and actual revenues and expenses, and c) proposing a program and budget for the upcoming year for review and approval by the CPED Director that: a) MacPhail is continuing to carry out the legislative intent as outlined in the Governmental Program, and b) the projected revenues will support the projected expenses. The program report will include at minimum information (both actual and projections) about major activities, including the number of people served by the educational programs. The City will not have artistic control over the music education program.
- Maintain books and records.

Allowed uses – A music education center that includes studios, classrooms, and a performance hall, together with education programming, other cultural performances, and related and ancillary

uses in the City of Minneapolis, pursuant to which the City expects to support cultural participation and encourage economic development and tourism.

Financing – MacPhail may encumber its leasehold interests in the Premises with a subordinate mortgage.

Future potential sale – In the event the lease is terminated and the City determines that the Premises are no longer usable or needed for the Governmental Program and/or the Governmental Program is terminated, the City may sell the Premises with the consent of the Commissioner of Finance. Said sale must be for “fair market value.” Unless the G.O. Compliance Legislation no longer applies to the Project, the net sale proceeds after sale-related costs will go first to repay the State grant, then to retire any outstanding financing, including City revenue bonds and acquire underlying fee title to the Premises, then will be split between the State of Minnesota and MacPhail in proportion to the table below. MacPhail will reimburse the City for any costs incurred in the sale and/or property management in the interim between when MacPhail is no longer operating the property and the eventual sale.

Sources of project funds	Amount*	Percentage allocation*
State of Minnesota	\$5,000,000	20%
MacPhail Center for Music	\$20,000,000	80%
	\$25,000,000	100%

* - these numbers are approximate and are in the process of being finalized at the time this report was written

Default under State grant agreement – In the event that a default under the use/lease agreement results in the City being in default under the State grant agreement, the City may impose upon MacPhail any remedy imposed upon the City by the State.

Other provisions – MacPhail:

- Cannot sublet without the City’s consent.
- May make additional improvements or modifications to the Premises without the City’s approval, as long as said improvements or modifications don’t reduce the Project’s value or the ability to achieve the Governmental Program.
- Must maintain and insure the Premises and restore them in the event of damage.
- Must indemnify the City against liability for MacPhail actions in building, maintaining and operating the Facility on the Premises.
- Must list its job openings with the State of Minnesota for one year.
- Must comply with any other requirements imposed by the State.
- Must covenant to manage and invest its “endowment” assets in such a manner as to assure that: a) there are sufficient funds to complete the Improvements, b) the operation of the Governmental Program remains financially viable for the duration of the lease, and c) the bonds and State grant can be repaid in the event of a non-cured default by MacPhail.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney’s office and Finance Officer, determines that said revisions do not materially impact the City’s rights, obligations or interests.