



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

Date: September 12, 2006
To: Council Member Lisa Goodman, Community Development Committee
Subject: Supplemental Term to MacPhail Center for Music Ground Lease

Recommendation:

Authorize the appropriate city officials to execute an amendment to the Ground Lease Agreement with MacPhail Center for Music to allow new terms as described in this report.

Previous Directives:

1. On July 21, 2006, the City Council adopted a resolution establishing the governmental program to be achieved through the construction and operation of MacPhail Center for Music; and accepted a \$5,000,000 grant from the State of Minnesota for the project; and authorized city officials to execute a grant agreement with the State of Minnesota, a use/lease agreement with MacPhail, a ground lease with MacPhail, a disbursing agreement with the title company and other funders; and amended the 2006 General Appropriation Resolution to increase the appropriation in Fund 0600-890-8933 (state grants and loan programs) by \$5,000,000.
2. 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.
3. On December 14, 2001, the City Council and MCDA Board of Commissioners approved the Parcel C redevelopment and TIF plans.
4. Also on December 14, 2001, the Board of Commissioners approved redevelopment contract terms and authorized the land sale to CSM Investors II, Inc.

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Approved by: Chuck Lutz, Deputy Director CPED

Mike Christenson, Director of Economic Development CPED

Presenter in Committee: Carrie Flack, Senior Project Coordinator

Financial Impact

- No financial impact
- Action is within the Business Plan

Community Impact

- 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: Lifelong Learning Second To None – schools, libraries and innovation; Connected Communities – great spaces and places, thriving neighborhoods; Enriched Environment – greenspace, arts, sustainability; and A Premier Destination – visitors, investment and vitality
- 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 Center for Music project.

Supporting Information

On August 29, 2006, the City of Minneapolis and MacPhail entered into a Ground Lease and an Operating Lease for the MacPhail property. MacPhail has four options to renew the term of the Operating Lease, provided that the City determines by official action that renewal of the Operating Lease continues to carry out the Governmental Program, as defined in the Operating Lease. If the City does not make such determination, the Operating Lease will terminate.

The State of Minnesota has taken the position that the City must have the absolute ability, without cause, to replace the operator of the Governmental Program at the end of the initial term (20 years) or subsequent renewal periods. This was not expressly required in past deals. Moreover, it is not consistent with the intent of the deal that the City and MacPhail have had from the beginning. It has never been the City's intent to have the ability not to renew the Operating Lease with MacPhail without cause. The City does have other rights to terminate in the event of default, or if the City determines that the Governmental Program is no longer needed, etc.

Although remote, there is the possibility that the City would not renew the Operating Lease and MacPhail could lose its investment. MacPhail has requested, and City staff supports, a supplemental term to the Ground Lease that would compensate MacPhail if the City chose not to renew the Operating Lease.

The supplemental term to the Ground Lease would require fair market value payment to MacPhail. Specifically, if the City chooses not to renew the Operating Lease with MacPhail but has determined to continue the Governmental Program, the City will purchase MacPhail's interest in the property at the time of such non-renewal, provided the State of Minnesota consents to payment at such time, but in any event MacPhail shall be paid no later than upon the termination of the Ground Lease. If the payment is made at a date which is later than the date of non-renewal, then the City will pay MacPhail interest on the

purchase payment at the rate of two percent over the prime rate of interest. The Ground Lease runs 99 years; the Operating Lease has an initial term of 20 years with 20-year renewals.