

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

Date: September 28, 2010

To: Council Member Lisa Goodman, Community Development Committee

**Subject:** A Public Hearing and Request for Preliminary and Final Approval of up to \$11,000,000 in Tax-exempt Revenue Bonds Designated as Recovery Zone Facility Bonds for the Mozaic Partners, LLC

**Recommendation:** The CPED Director recommends that the City Council adopt the attached Resolution giving Preliminary and Final Approval to the issuance of up to \$11,000,000 in Tax-exempt Revenue Bonds Designated as City of Minneapolis Recovery Zone Facility Bonds for the Mozaic Partners, LLC.

**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): NA

## Financial Impact

- Other financial impact: The issuance of revenue bonds for the Mozaic Partners, LLC will generate revenue bond administrative fees of approximately \$27,500 a year that are used to support the small business assistance programs of the City of Minneapolis.

## Community Impact

- Neighborhood Notification: Lowry Hill East has been notified
- City Goals: The proposed project promotes the City's goal to make the City of Minneapolis a Premier Destination by promoting private business investment in the City.
- Sustainability Targets: NA
- Comprehensive Plan: The proposed project complied with the Minneapolis Plan as of 2008. An updated Planning review is currently underway.
- Zoning Code: The proposed project is in compliance.
- Living Wage/Business Subsidy Agreement Yes \_\_\_\_ No X
- Job Linkage Yes \_\_\_\_ No X

## Supporting Information

### Project Location & Description:

The proposed project consists of the construction of a 435 stall multi-story parking ramp on land that is currently used for surface parking. The proposed facility is to be located at 1320 Lagoon Avenue and will serve as support for the very busy area surrounding Hennepin and Lake.

The Proposed parking ramp is the first phase of planned additions above the ramp that will include 65,000 square feet of commercial space and 30,000 square feet of retail space.

### Type of Financing:

The proposed project calls for the issuance of up to \$11,000,000 in Tax-exempt Revenue Bonds designated as City of Minneapolis Recovery Zone Facility Bonds .

As part of the American Recovery and Reinvestment Act of 2009, the Federal Government provided political entities with the ability to issue special Recovery Zone Facility Revenue Bonds. These bonds expand the uses of tax-exempt revenue bonds and reduce certain restrictions on the borrowers. The City of Minneapolis received issuance authority for \$19.42 million and in April 2009 established its specific Recovery Zone. Staff had recommended that \$16.5 million of the City of Minneapolis authorization be allocated to another proposed project. The Mozaic Partners, LLC proposed project is within the Recovery Zone and designation of the proposed bonds would allow the Mozaic Partners, LLC the ability to use tax-exempt financing to construct the ramp. On September 10, 2010 the State of Minnesota awarded the City of Minneapolis in excess of \$14 million in issuance authority for Recovery Zone Facility Bonds that can be used for the Mozaic Partners, LLC project.

#### Sources:

Recovery Zone Facility Bonds	\$11,000,000
Equity	<u>5,600,000</u>
Total	\$16,600,000

#### Uses:

Construction	\$14,000,000
Issuance Costs	1,500,000
Contingency	<u>1,100,000</u>
Total	\$16,600,000

**Present Employment: 7**

**New Employment:** 2 parking ramp only

Additional employment will be added when the commercial and retail space are added.

**Assessor's Estimate Annual Tax Increase:** Not yet established.

**Affirmative Action Compliance:** Currently in progress. Compliance will be completed prior to the bond closing.

**CITY IRB POLICIES:**

Job Component

Minimum standard of one (1) job per 1,000 square feet of building area.

Mozaic Partners, LLC:

The proposed parking ramp is the first phase of planned additions on top of the ramp for commercial space and restaurant space.

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.

Mozaic Partners, LLC:

Not applicable.

Development Standards

Compliance with the Land Use Plan of the City's Comprehensive Plan.

Mozaic Partners, 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.

Mozaic Partners, LLC:

Not applicable

Restaurant/Bank

IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in an 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.

Mozaic Partners, LLC:

Not applicable

Tax-exempt Institution

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

Mozaic Partners, LLC:

Not applicable

IRB CAP:

The Recovery Zone Facility Bonds are subject to the limits granted to the City of Minneapolis and the State of Minnesota and other political entities. On September 10, 2010 the State of Minnesota awarded the City of Minneapolis in excess of \$14 million in Recovery Zone Facility Bond authorization that can be used for this proposed project.

BOND COUNSEL:

Kennedy, Graven, Chartered

UNDERWRITER:

Dougherty & Company, LLC

# **RESOLUTION of the City of Minneapolis**

**AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF RECOVERY ZONE FACILITY REVENUE BONDS (MOZAIC PARTNERS, LLC PROJECT), SERIES 2010; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE BONDS, AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE BONDS; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO**

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

1. **STATUTORY AUTHORIZATION.** The City of Minneapolis, Minnesota (the "City"), is a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, and is authorized by Minnesota Statutes, Sections 469.152 — 469.1651, as amended (the "Act"), to carry out the public purposes described therein and contemplated thereby. Under the applicable provisions of the Act, the City is authorized to issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project comprised of any properties, real or personal, used or useful in connection with a revenue-producing enterprise, or any combination of two or more such enterprises engaged in any business. In connection with the issuance of such revenue bonds, the City is further authorized to enter into a revenue agreement with a contracting party under which the contracting party agrees to make payments as necessary to provide for the prompt payment of the principal of and interest on such revenue bonds. The contracting party is authorized to mortgage or otherwise encumber or grant a security interest in any project and its revenues to secure the timely payment of the revenue bonds issued by the City under the Act.

2. **RECOVERY ZONE FACILITY BONDS.** Pursuant to Section 1400U-1 and 1400U-3 of the Internal Revenue Code of 1986, as amended (the "Code"), as enacted by Section 1401 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), Public Law No. 111-5, 123 Stat. 115 (2009), and pursuant to Notice 2009-50, 2009-26 IRB 1118 (June 29, 2009) ("Notice 2009-50"), political subdivisions of the States and other qualified issuers are authorized to issue recovery zone facility bonds as exempt facility bonds under Section 142 of the Code if: (i) 95 percent or more of the net proceeds of such bonds are to be used for recovery zone property; (ii) the bonds are issued before January 1, 2011; and (iii) the issuer of the bonds designates such bonds as recovery zone facility bonds. Under Section 1400U-3(c) of the Code, the term "recovery zone property" means property to which Section 168 of the Code applies (or would apply but for Section 179 of the Code) if such property was constructed, reconstructed, renovated, or acquired by purchase by the taxpayer after the date on which the designation of a recovery zone took effect, the original use of which in the recovery zone commences with the taxpayer, and substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

3. **THE COMPANY AND THE FACILITY.** The City has received a request from Mozaic Partners, LLC, a Minnesota limited liability company (the "Company"), that the City issue recovery zone facility revenue bonds, to be designated Recovery Zone Facility Revenue Bonds (Mozaic Partners, LLC Project), Series 2010 (the "Bonds") under the Act and

Section 1400U-3 of the Code to finance the acquisition and construction of a parking ramp of approximately 435 spaces (the "Project"), to be located on a portion of the property located at 1320 Lagoon Avenue in Minneapolis, Minnesota 55408, and fund one or more reserves to secure the Bonds, to fund a portion of the interest on the Bonds, and to pay the costs of issuing the Bonds and related costs. The Project will be owned and operated by the Company. The Project comprises a "project" for purposes of the Act and constitutes "recovery zone property" to be used in the active conduct of a "qualified business" of the Company for purposes of Section 1400U-3 of the Code.

4. ALLOCATION OF AUTHORITY TO ISSUE RECOVERY ZONE FACILITY BONDS. Under the provisions of Section 1400U-3(b)(2) of the Code, the maximum aggregate face amount of recovery zone facility bonds that may be designated by an issuer cannot exceed the amount of recovery zone facility bond limitation allocated to such issuer under Section 1400U-1 of the Code. Pursuant to Section 1400U-1 and Notice 2009-50, there was allocated to the City a recovery zone facility bond limitation of \$19,490,000. In addition, pursuant to a special re-allocation made by the Minnesota Department of Management and Budget on September 10, 2010, the City received an additional recovery zone facility bond limitation of \$14,938,160 for a combined total of \$34,447,650.

5. ALLOCATION AND ISSUANCE OF BONDS. The Bonds are proposed to be issued by the City, in one or more series, as tax-exempt bonds, including tax-exempt recovery zone facility bonds authorized under Section 1400U-3 of the Code, in the original aggregate principal amount of approximately \$11,000,000 or the maximum amount for which an allocation of recovery zone facility bond limitation authority is available. If all the Bonds cannot be issued as tax-exempt recovery zone facility bonds due to insufficient allocation of recovery zone facility bond limitation authority, then the remaining portion of the Bonds required to finance the costs of the Project will be issued as a separate series of taxable Bonds. The Bonds will be issued under the terms and conditions of this resolution and an Indenture of Trust, dated on or after October 1, 2010 (the "Indenture"), between the City and a trustee to be selected by the Company (the "Trustee"). The proceeds of the Bonds will be loaned to the Company (or a related organization) pursuant to the terms of a Loan Agreement, dated on or after October 1, 2010 (the "Loan Agreement"), between the City and the Company. The Bonds will be special, limited obligations of the City that: (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.

6. OBLIGATIONS OF THE CITY. The City acknowledges, finds, determines, and declares that the issuance of the Bonds is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Bonds, and the other actions of the City under this resolution, the Indenture, and the Loan Agreement constitute a public purpose and are in the interests of the City.

7. THE BONDS AND THE INDENTURE. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Bonds in the aggregate principal amount of \$11,000,000, and there is hereby allocated to the Bonds recovery zone facility bonds limitation authority in an amount equal to the principal amount of the Bonds. The Bonds, substantially in the form set forth in the Indenture now on file with the City, are hereby approved with the amendments referenced herein. The City hereby authorizes the Bonds to be issued as tax-exempt recovery zone facility bonds the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Bonds, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Bonds shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Indenture, in the form now on file with the City, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Bonds, the stated maturities of the Bonds, the interest rates on the Bonds, and the terms of redemption of the Bonds) as the Finance Officer, in his discretion, shall determine. The execution of the Bonds with the manual or facsimile signature of the Finance Officer and the delivery of the Bonds by the City shall be conclusive evidence of such determination.

The Indenture is hereby approved. All of the provisions of the Indenture, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Indenture shall be substantially in the form now on file with the City with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determination.

8. THE LOAN AGREEMENT. The Loan Agreement is hereby approved. All of the provisions of the Loan Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Loan Agreement shall be substantially in the form now on file with the City, with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determinations. Except for certain reserved rights, the interests of the City in the Loan Agreement will be assigned to the owners of the Bonds pursuant to the terms of the Indenture.

9. OTHER CITY DOCUMENTS. The Finance Officer is hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Bonds, including a Bond Purchase Agreement, dated on or after October 1, 2010 (the "Purchase Agreement"), between the City, the Company, and Dougherty & Company LLC, as original purchaser of the Bonds, various certificates of the City, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, with respect to the Bonds, a certificate as to arbitrage and rebate, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Bonds. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel to prepare, execute, and deliver its approving legal opinions with respect to the Bonds.

10. DISCLOSURE DOCUMENTS. The City will not participate in the preparation of an official statement or other disclosure documents relating to the offer and sale of the Bonds (the "Disclosure Document"), and will make no independent investigation with respect to the information contained in the Disclosure Document, including the appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information.

11. SUBSEQUENT AMENDMENTS. On any date subsequent to the date of issuance of the Bonds, the Finance Officer is hereby authorized to execute and deliver any amendments or supplements to any of the documents referred to in this resolution or other documents executed and delivered in connection with the issuance of the Bonds if, after review by bond counsel, the Finance Officer determines that the execution and delivery of such amendment or supplement is in the interests of the City. The Finance Officer may impose any terms or conditions on his execution and delivery of any such amendment or supplement as the Finance Officer deems appropriate.

12. LIMITATIONS OF LIABILITY. No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council of the City, or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Council of the City nor any officer or employee executing the Bonds shall be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No provision, covenant, or agreement contained in the aforementioned documents, the Bonds, or in any other document relating to the Bonds, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Bonds, as provided therein.

Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City, and any holders of the Bonds issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holders from time to time of the Bonds issued under the provisions of this resolution.

13. SEVERABILITY. In case any one or more of the provisions of this resolution, other than the provisions limiting the liability of the City, or of the aforementioned documents, or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Bonds, but this resolution, the aforementioned documents, and the Bonds shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

14. VALIDITY OF THE BONDS. The Bonds, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Bonds and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Bonds, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

15. ADDITIONAL ACTIONS. The officers of the City, bond counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Bonds, for the full, punctual, and complete

performance of all the terms, covenants, and agreements contained in the Bonds, the aforementioned documents, and this resolution.

16. DESIGNATION AS PROGRAM BONDS. The Bonds are hereby designated "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 1997R-402 of the City adopted December 12, 1997.

17. EFFECTIVE DATE. This resolution shall take effect and be in force from and after its approval and publication. Pursuant to Chapter 4, Section 9, of the Charter of the City, only the title of this resolution and a summary of this resolution conforming to Minnesota Statutes, Section 331A.01, subdivision 10, shall be published in the official paper of the City.