

Minneapolis Community Development Agency

Request for City Council Action

Date: December 16, 2003

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

Refer to: MCDA Board of Commissioners

Prepared by Jack Kryst, Director, Development Finance, Phone 612-673-5130

Approved by Lee Sheehy, MCDA Executive Director and CPED Director
Patrick Born, Finance Officer

Subject: Transfer of MCDA Assets and Obligations to the City

Previous Directives: On August 8, 2003, the City Council adopted Resolution 2003R-358, approving certain policies and directing certain actions pertaining to the transfer of employees, assets and activities from the Minneapolis Community Development Agency to the City and directing the CPED Director, the Finance Officer and the City Attorney to report back to City Council with recommendations on the transfer of certain MCDA assets and obligations.

Ward: Citywide

Neighborhood Group Notification: N/A

Consistency with *Building a City That Works*: N/A

Comprehensive Plan Compliance: N/A

Zoning Code Compliance: N/A

Impact on MCDA Budget: (Check those that apply)

- No financial impact
 Action requires an appropriation increase to the MCDA Budget
 Action provides increased revenue for appropriation increase
 Action requires use of contingency or reserves
 Other financial impact (Explain):

Living Wage / Business Subsidy: N/A

Crown Roller Mill,
105 Fifth Ave. S., Suite 200
Minneapolis, MN 55401-2534
Telephone: (612) 673-5095
TTY: (612) 673-5154
Fax: (612) 673-5100
www.mcda.org

Job Linkage: N/A

Affirmative Action Compliance: N/A

RECOMMENDATION:

City Council Recommendation: That the City Council adopt the attached resolution transferring certain money, investments, personal property, assets, programs, projects, districts and obligations of the MCDA to the City of Minneapolis.

MCDA Board Recommendation: That the MCDA Board adopt the attached resolution consenting to the transfer of certain money, investments, personal property, assets, programs, districts and obligations of the MCDA to the City of Minneapolis.

Background/Supporting Information

Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31 through 34 provides authority for the City of Minneapolis to establish the Department of Community Planning and Economic Development (CPED) and, among other things, to transfer assets and obligations of the Minneapolis Community Development Agency (MCDA) to the City.

On August 8, 2003, the City Council established CPED by ordinance and directed staff to report back to the City Council with recommendations for the transfer of the MCDA's assets and obligations.

This report is one of several that implement the transfer of MCDA assets and obligations. A report on the Single Family Bond Program was before the Council on December 15, 2003 and the transfer of the Common Bond Fund is before the Council this cycle.

This report describes recommendations regarding steps to be taken to transfer various assets and obligations, developed by a working group composed of staff from CPED, the Finance Department, and the City Attorney's Office. Assets to be transferred effective January 1, 2004 include certain money, investments, personal property, assets, programs, projects, districts and obligations. As noted in the November 10, 2003 status report, staff is not recommending the transfer of most MCDA-owned real estate and developments until certain City real estate policies and practices have been revised, which is expected to occur by April 2004. The City Council has been or will be asked to adopt separate resolutions transferring the Common Bond Fund and Single Family Bond Program.

Transfer Resolution

The attached City Council resolution transfers to the City all MCDA money, investments, personal property, assets, programs, projects, districts and obligations, except those noted in the resolution, and authorizes City officers to execute such documents and agreements as may be necessary to effectuate the transfers, including an Assignment and Assumption Agreement. The resolution also provides for the City's acceptance and assumption of the contractual obligations of the MCDA with respect to the transferred money, investments, personal property, assets, programs, projects, districts and obligations.

A separate MCDA Board resolution consents to the transfers and authorizes execution of necessary documents and agreements, including an Assignment and Assumption Agreement and a Bill of Sale.

A more detailed explanation of the City Council resolution appears below.

Money and Receivables

The resolution transfers, assigns and conveys all money and receivables of the MCDA to the City, except the Legacy Fund (SPH0). This fund is excluded from immediate transfer because of the nature of its investment portfolio. This fund will be transferred by separate report and action after completion of the investment restructuring authorized by the Council in a 2003 budget action.

Investments

The resolution transfers, assigns and conveys all investments of the MCDA to the City, except Legacy Fund investments, which will be restructured before they are transferred, and Common Bond Fund investments, which will be transferred by a separate resolution.

Personal Property and Assets

All personal property and non-real estate assets of the MCDA are transferred to the City by the resolution.

Contracts and Obligations

The resolution transfers all contracts and obligations, including bonds, notes and other debt obligations, except contracts and obligations pertaining to the Common Bond Fund (to be transferred by separate resolution), the Single Family Bond Program (to be transferred by separate resolution), the Bank Qualified Bank Direct Revenue Bond Program (which by IRS regulation must remain with a separate legal entity that issues less than \$10 million in bonds annually and thus will not be transferred), and

redevelopment and other agreements regarding MCDA-owned real estate (will be transferred when the real estate is transferred).

A large number of contracts, not yet fully identified, may have restrictions to transfer that will need to be dealt with on a case-by-case basis. It is the intent of the language in the resolution that those contracts and obligations that by law or agreement cannot be transferred without notice, consent or other prerequisites will be transferred without the need for further Council or Board action when such requirements have been satisfied by staff.

Programs, Projects and Districts

All programs, projects and districts, including tax increment financing districts and the Common Project, are transferred by the resolution. The exceptions are the Common Bond Fund Program and the Bank Qualified Bank Direct Revenue Bond Program, as noted above.

Contractual Obligations

The resolution provides for the City's acceptance and assumption of the contractual obligations of the MCDA with respect to the transferred assets. The City agrees to be bound by the actions or approvals of the MCDA Board taken prior to January 1, 2004 for which contracts are pending. The pledge of the full faith and credit of the MCDA to bonds, notes or other debt obligations that are transferred will be not secured by the full faith and credit or taxing power of the City, but only by the assets pledged by the MCDA.

Given the large number of loans and mortgages that require documentation to establish that they are satisfied or subordinated, language is included in the resolution to allow the Finance Officer to designate the appropriate staff to process and sign these documents.

Real Estate

MCDA-owned real estate is not transferred by the resolution with the exception of real estate identified for transfer in the separate Common Bond Fund action. Staff is preparing revisions to various City policies and procedures pertaining to real estate acquisition and disposition. As was reported to you in November, it is expected that these revisions and a resolution transferring the balance of MCDA-owned real estate will be presented for City Council approval by April 2004.

One consequence of this process is the need for the MCDA Board to continue to meet and dispose of MCDA-owned property until the balance of property inventory is transferred.

Financial Support

The resolution recognizes that from time to time there may be a need for the MCDA to take an action that involves the expenditure of funds. Since all moneys and receivables are being transferred to the City, Section 11 acknowledges that the City will provide such support with respect to any existing assets and obligations retained by the MCDA.

Effective Date

The money, investments, personal property, assets, programs, projects, districts and obligations described in the resolution are to be transferred effective January 1, 2004.

Assignment and Assumption Agreement & Bill of Sale

Although the City resolution is the first statutorily required step in the transfer of MCDA assets and obligations to the City, three other companion documents are attached:

- a resolution of the MCDA consenting to the transfer;
- an Assignment and Assumption Agreement between the City and the MCDA memorializing the actions described in the resolutions; and
- a Bill of Sale for the personal property transfer.

The resolutions authorize appropriate officials and staff to execute these and any other required documents.

Transferring Money, Investments, Personal Property, Assets, Programs, Projects, Districts and Obligations of the Minneapolis Community Development Agency to the City of Minneapolis.

Whereas, the City Council, exercising powers granted by Minnesota Laws 2003, Chapter 127, Article 12, Sections 31 – 34, adopted Chapter 415, Minneapolis Code of Ordinances, establishing the Department of Community Planning and Economic Development (“CPED”) and authorizing transfers to the City of the money, real property, investments, personal property, assets, programs, projects, districts, developments and obligations of the Minneapolis Community Development Agency (“MCDA”); and

Whereas, the City Council has determined that it is in the best interests of the City and the MCDA to hereby transfer the money, investments, personal property, programs, projects, districts and obligations described below; and

Whereas, the City Council has decided to delay the transfer of most MCDA-owned real estate and developments until certain City real estate policies and procedures have been revised; and

Whereas, the City Council has adopted or will adopt separate resolutions pertaining to the transfer of the MCDA’s Common Bond Fund and its Single Family Bond Program;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis as follows:

1. The City Council transfers, assigns and conveys all money and receivables of the MCDA to the City, except as follows:

Legacy Fund/SPH0
2. The City Council transfers, assigns and conveys all investments of the MCDA to the City, except as follows:

Legacy Fund Investments—to be restructured before transfer
Common Bond Fund Investments—transferred by separate resolution
3. The City Council transfers, assigns and conveys all personal property and non-real estate assets of the MCDA to the City.

4. The City Council transfers, assigns and conveys all contracts and obligations, including bonds, notes and other debt obligations, of the MCDA to the City, except those contracts and obligations pertaining to the programs and activities described below:

Common Bond Fund Program—transferred by separate resolution

Single Family Bond Program—transferred by separate resolution

Bank Qualified Bank Direct Revenue Bond Program—will not be transferred

Redevelopment and Other Agreements Regarding MCDA-Owned Real Estate—will not be transferred until the real estate is transferred

Those contracts and obligations that by law or agreement cannot be transferred without notice, consent or other prerequisites shall transfer when such prerequisites have been satisfied. CPED staff shall endeavor to promptly provide the necessary notices and obtain the requisite consents.

5. The City Council transfers, assigns and conveys all programs, projects and districts, including tax increment financing districts, of the MCDA to the City, except as follows:

Common Bond Fund Program—transferred by separate resolution

Bank Qualified Bank Direct Revenue Bond Program—will not be transferred

6. The City accepts and assumes the contractual obligations of the MCDA with respect to the transferred money, investments, personal property, assets, programs, projects, districts and obligations of the MCDA. The City further agrees to be bound by the actions or approvals of the MCDA Board of Commissioners taken prior to January 1, 2004, but for which contracts are pending. The pledge of the full faith and credit of the MCDA to any bonds, notes or other debt obligations of the MCDA that are transferred to the City shall not be secured by the full faith and credit or taxing power of the City, but only by the assets pledged by the MCDA.
7. The Mayor, the Finance Officer and the City Clerk (or their designees) are hereby authorized and directed to sign and deliver such documents and agreements as may be required to accomplish the foregoing transfers, assignments and conveyances, including without limitation an assignment and assumption agreement and a bill of sale in substantially the forms currently on file with CPED.
8. With respect to transferred loans, the City Council hereby authorizes the City's Finance Officer or Assistant Finance Officer to periodically execute

and deliver loan subordinations and mortgage satisfactions in accordance with existing CPED policies. With respect to transferred redevelopment agreements pertaining to closed conveyances, the CPED Director or Deputy Director are hereby authorized to execute and deliver completion certificates in accordance with existing CPED policies.

9. The effective date of the transfers authorized by this resolution shall be January 1, 2004.
10. CPED staff shall prepare to transfer MCDA-owned real estate to the City by approximately April 2004 or upon earlier adoption of various City policies and procedures pertaining to real estate acquisition and disposition.
11. The City shall provide financial support to the MCDA with respect to any existing assets and obligations retained by the MCDA.

ASSIGNMENT AND ASSUMPTION AGREEMENT
(General)

This Assignment and Assumption Agreement (“Agreement”) is effective as of January 1, 2004, and is by and between the Minneapolis Community Development Agency, a Minnesota public body corporate and politic (the “Agency”), and the City of Minneapolis, a Minnesota municipal corporation (the “City”).

WHEREAS, pursuant to the authority of 2003 Minnesota Laws, Chapter 127, Article 12, Sections 31-34, and as contemplated by Chapter 415 of the Minneapolis Code of Ordinances, the City has adopted a resolution authorizing execution of this Agreement in order to transfer to the City certain assets, rights and obligations of the Agency related to various programs, projects, districts and developments;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment. The Agency hereby assigns to the City all of the Agency’s assets, rights and obligations related to the following:

- a) Neighborhood Revitalization Program,
- b) Citizen Participation Program,
- c) Community Economic Development Fund Program,
- d) Commercial Industrial Real Estate Broker Participation Program,
- e) Neighborhood Economic Development Fund Program,
- f) 2% Commercial Loan Program,
- g) Working Capital and Micro Loan Programs,
- h) Business Association Assistance Program,
- i) Business Development Fund Program,
- j) Capital Acquisition Loan Program,
- k) Capital Investment Fund Program,
- l) Commercial Corridors Program,
- m) Living Wage Policy Program,
- n) Minneapolis Industrial Land and Employment Strategy,
- o) Commercial/Industrial Revenue Bond Program,
- p) Commercial Fix and Paint Programs,
- q) Leveraged Investment Fund Program,
- r) Empowerment Zone Program,
- s) Affordable Housing Trust Fund Program,
- t) Emergency Shelter Grant Program,
- u) HOME Program,
- v) Housing Revenue Bond Program,
- w) Low Income Housing Tax Credit Program,

- x) CDGB-funded Home Improvement Loan Program (CityLiving Home Repair, CityLiving Code Abatement and CityLiving Rental Rehab),
- y) GMHC 100Homes Program,
- z) GMHC Homeownership Program,
- aa) Lot Reduction Program,
- bb) Vacant and Boarded Housing Reduction Program,
- cc) Non-profit Development Assistance Program,
- dd) Mortgage Foreclosure Prevention Program,
- ee) NIP,
- ff) Panel Contracts,
- gg) Professional Services Agreements,
- hh) Goods and Services Contracts,
- ii) Construction and Construction Management Contracts,
- jj) Loans and Grants to or from the Agency,
- kk) Redevelopment Projects, Housing Development Projects, Industrial Development Districts, City Development Districts and other types of statutory districts or projects,
- ll) Tax Increment Financing Districts,
- mm) Redevelopment Agreements that provide financing only,
- nn) Tax Increment Revenue Notes and Pledge Agreements, and
- oo) Assessment Agreements.

The assets, rights and obligations described in this Section 1 are hereinafter referred to as the “Assigned Assets, Rights and Obligations.” This assignment specifically excludes (i) assets, rights and obligations related to the Common Bond Fund and the Single Family Bond Program, which are being transferred by separate agreements, and (ii) the Legacy Fund (SHP0) investments and any assets, rights and obligations related to MCDA-owned real estate, which will be dealt with in the future.

2. Acceptance and Assumption. The City hereby accepts and assumes the Assigned Assets, Rights and Obligations, and agrees that from and after the effective date hereof, all references to the Agency in such agreements are deemed to refer to the City.

3. Effective Date. This Agreement shall be effective as of January 1, 2004, provided, however, that those assets, rights and obligations that cannot be transferred without notice, consent or other prerequisites to transfer shall transfer when such prerequisites have been satisfied.

4. Miscellaneous Provisions.

(a) Cooperation. The parties agree without further consideration to execute any further documents and instruments and to perform such other acts as may be required to further evidence the assignment and assumption provided for in this Agreement, including the Agency’s execution and delivery of any required bill of sale or quit claim deed.

(b) Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings related to such subject matter.

(c) Amendment. This Agreement may be amended only in writing signed by all parties.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. Neither this Agreement nor any rights or obligations hereunder may be assigned without the written consent of the other party.

(e) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

(f) Severability. If any provision of this Agreement is prohibited by or is unlawful under any applicable law or regulation of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition only, without invalidating the remaining provisions hereof.

(g) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

**MINNEAPOLIS COMMUNITY
DEVELOPMENT AGENCY**

By _____
Deputy Executive Director

Approved as to form:

Assistant City Attorney

(Signature Page to Assignment and Assumption Agreement-General)

CITY OF MINNEAPOLIS

By _____
Mayor

Attest _____
City Clerk

Countersigned _____
Assistant Finance Officer

Department Head Responsible
For Monitoring Contract:

Approved as to form:

Assistant City Attorney

BILL OF SALE

THIS BILL OF SALE is effective the 1st day of January, 2004, by the Minneapolis Community Development Agency, a Minnesota public body corporate and politic (“Seller”) for the benefit of the City of Minneapolis, a Minnesota municipal corporation (“Buyer”).

NOW, THEREFORE, for valuable and good consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby quit claims, transfers, conveys and assigns to Buyer all right, title and interest of the Seller in all personal property owned by Seller and located at 105 Fifth Avenue South, Minneapolis, Minnesota.

TO HAVE AND TO HOLD all the said property described herein unto Buyer, its successors and assigns, to its own use and benefit forever.

THE FOREGOING SALE, TRANSFER, CONVEYANCE AND ASSIGNMENT OF THE ASSETS IS MADE “AS IS,” “WHERE IS,” “WITH ALL FAULTS,” FREE AND CLEAR OF ANY CLAIMS OR LIENS, BUT WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED.

IN TESTIMONY WHEREOF, witness the signature of Seller hereto the day and year first above written.

**MINNEAPOLIS COMMUNITY
DEVELOPMENT AGENCY**

By _____
Its Deputy Executive Director

Approved as to form:

Assistant City Attorney