

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

Date: November 9, 2010

To: Council Member Lisa Goodman, Chair, Community Development  
Committee

**Subject:** A Public Hearing and Request for a Technical Correction 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 for a Technical Correction 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:** Original Preliminary and Final Approval Granted by the City Council on October 8, 2010.

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**

**Technical Correction:**

Due to an omission in the original public hearing notice, the notice has been republished and requires a new approving resolution by the City Council.

**Project Location & Description:**

The proposed project includes approximately 11,000 square feet of first floor retail space, using private financing, with a six story parking ramp to be constructed above the retail space, using Recovery Zone Facility Bonds. A later phase will add three stories of office space. The project is located at 1320 Lagoon Avenue.

**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. The authority to issue Recovery Zone Facility Bonds expires on December 31, 2010. Staff had recommended that \$16.5 million of the City of Minneapolis authorization be allocated to another proposed project. Upon receipt of the Mozaic Partners, LLC request, City staff requested and the State of Minnesota awarded the City of Minneapolis in excess of \$14 million in additional issuance authority for Recovery Zone Facility Bonds that can be used for the Mozaic Partners, LLC 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.

The Bonds will be marketed to a limited market of sophisticated Accredited Investors and Qualified Institutional Buyers.

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

**Jobs Retained:** 7

**New Employment:** Construction jobs: 57 FTE's for one year

Parking ramp jobs: 2

Retail jobs: 50 to 100

**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

**AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF RECOVERY ZONE FACILITY REVENUE BONDS (MOZAIC PARTNERS, LLC PROJECT), SERIES 2010A, AND TAXABLE COMMERCIAL DEVELOPMENT REVENUE BONDS (MOZAIC PARTNERS, LLC PROJECT), SERIES 2010B; 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 Sections 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 (i) finance the acquisition and construction of a parking ramp with approximately 436 spaces and consisting of approximately 169,505 square feet (the "Project") to be located on floors two through seven of a seven-story mixed-use building near the property located at 1320 Lagoon Avenue in the City; (ii) fund a portion of the interest on the Bonds; (iii) fund a debt service reserve fund; and (iv) pay a portion of the costs of issuing the Bonds. 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 \$34,428,160.

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 or for other reasons, 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 December 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 December 1, 2010 (the "Loan Agreement"), between the City and the Company. The repayment of the loan under the terms of the Loan Agreement and the payment of the principal of, premium, if any, and interest on the Bonds will be secured by a Combination Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Rents and Leases, dated on or after December 1, 2010 (the "Mortgage"), from the Company to the Trustee, to provide security for the payment of the Bonds and for the performance of the Company's obligations under the Loan Agreement. 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. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the: (i) Recovery Zone Facility Revenue Bonds (Mozaic Partners, LLC Project), Series 2010A (the "Series 2010A Bonds"); and (ii) Taxable Commercial Development Revenue Bonds (Mozaic Partners, LLC Project), Series 2010B (the "Series 2010B Bonds"). The Series 2010A Bonds and the Series 2010B Bonds are hereinafter referred to collectively as the "Bonds." The Bonds will be issued in the maximum aggregate principal amount of \$11,000,000. The Series 2010A Bonds are hereby designated by the City as recovery zone facility bonds, within the meaning of Section 1400U-3 of the Code, and there is hereby allocated to the Series 2010A Bonds recovery zone facility bonds limitation authority in an amount equal to the principal amount of the Series 2010A Bonds. The City hereby authorizes the Series 2010A 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. The City hereby authorizes the Series 2010B Bonds to be issued as taxable revenue bonds the interest on which is includable in gross income for federal and State of Minnesota income tax purposes. The Bonds, substantially in the forms set forth in the Indenture now on file with the City, are hereby approved with the amendments referenced herein.

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 forms, and shall have such other terms, details, and provisions as are prescribed in the Indenture, in the forms now on file with the City, which forms are 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.

8. THE INDENTURE. 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.

9. 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.

10. DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT. The City has prepared an Application to the Minnesota Department of Employment and Economic Development ("DEED") for approval of the Project pursuant to the requirements of Section

469.154 of the Act. Pursuant to Section 469.154, subdivision 4, of the Act, prior to submitting an application to DEED for approval of the Project, the City Council has conducted a public hearing on the proposal to undertake the Project, as authorized under the terms of the Act. As required by the terms of Section 469.154 of the Act, the employees, officers, and agents of the City are hereby authorized and directed to submit an application to DEED for approval of the Project and the issuance of the Bonds.

11. 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 December 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.