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

Date: March 10, 2009

To: Council Member Lisa Goodman, Community Development Committee

Subject: A Public Hearing and Request for Preliminary Approval of up to $9.5 million in 501(c)(3) Revenue Bonds for Friends of WISE (W.I.S.E. Charter School Project).

Recommendation: **The CPED Director recommends that the City Council adopt the attached Resolution giving Preliminary Approval to the issuance of up to $8.5 million in 501(c)(3) Tax-Exempt Revenue Bonds and up to $1 million in Taxable Revenue Bonds for Friends of WISE (W.I.S.E. Charter School Project).**

Previous Directives: None.

Prepared by: Jessica Green, Business Finance (612) 673-5232
Approved by: Charles T. Lutz, Deputy Director CPED ________________
Catherine A. Polasky, Director, Economic Development ________________
Presenters in Committee: Jessica Green

Reviews
- Permanent Review Committee (PRC): Approval N.A.

Financial Impact
- Other financial impact: The issuance of revenue bonds for the W.I.S.E. Charter School Project will generate revenue bond administrative fees of approximately $23,750 a year that are used to support the small business assistance programs of the City of Minneapolis.

Community Impact
- Neighborhood Notification: The Near North Neighborhood representatives have been notified of this project.
- City Goals: This project enhances the City's goals of One Minneapolis and Making Lifelong learning Second to None by offering educational services that embrace culture and diversity.
- Sustainability Targets: N.A.

- Comprehensive Plan: This project is in compliance with the policies of the Minneapolis Plan.
- Zoning Code: The project is in compliance.
- Living Wage/Business Subsidy Agreement Yes ____ No _X__ All conduit revenue bonds allocated under State Statute Chapter 474A, refunding bonds and 501(c)(3) bonds are exempt from the State Act. City bond financing is not subject to the City's local ordinance if the intent of the bond financing is not to create jobs.
- Job Linkage Yes ____ No _X__

Supporting Information

Project Location & Description:
At this time, Friends of WISE, a 501(c)(3) non-profit corporation, is requesting financing for the purchase of the former Franklin Middle School building, located at 1501 Aldrich Avenue North. The building will be leased to the Carter G. Woodson Institute for Student Excellence Charter School (d.b.a. W.I.S.E. Charter School), an operating public charter school sponsored by the YMCA of Minneapolis. The W.I.S.E. Charter School currently serves grades K-7, with an enrollment of over 300 students. Beginning fall 2009, W.I.S.E. plans to expand their program to serve grades K-8 and begin a pre-school program. Enrollment is expected to grow to approximately 450 students over the next 24 months.

Type of Financing:
It is proposed that the City of Minneapolis issue up to $9,500,000 in 501(c)(3) Revenue Bonds. Bonds will be secured by a 1st mortgage and a security interest on the land, building and personal property comprising the project, pledge assignments, a dedicated sweep account, and a fully funded debt service reserve.

Sources	
Series 2009A Bonds (Tax-Exempt)	$8,355,000
Series 2009B Bonds (Taxable)	565,000
Total Uses:	$8,920,000

Uses	
Acquisition and Renovation	$7,055,000
Debt Service Reserve	858,000
Interest Reserve	350,000
Cost of Issuance	300,000
Underwriter's Discount	357,000
Total Uses:	$8,920,000

In the past, The City of Minneapolis has authorized the use of Revenue Bond for the financing of several charter school projects, including the Ascension Academy Charter School, the New Vision Charter School, Minnesota Transitions Charter School, and SEED Academy and Harvest Preparatory School.

Present Employment: W.I.S.E. Charter School currently has a staff of 47 employees.

New Employment: Within the next 24 months, W.I.S.E. plans to add approximately 20 additional staff.

Assessor's Estimate Annual Tax Increase: Tax-exempt facility.

Affirmative Action Compliance: W.I.S.E. Charter School is working with the City to update their Affirmative Action Plan.

<u>CITY IRB POLICIES:</u>

Job Component	Minimum standard of one (1) job per 1,000 square feet of building area. W.I.S.E: In compliance.

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. W.I.S.E: In compliance.
Development Standards	Compliance with the Land Use Plan of the City's Comprehensive Plan. W.I.S.E. 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. W.I.S.E: In compliance.
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. W.I.S.E: N/A
Tax-exempt Institution	Refinancing is permitted when new jobs are created or when a significant number of jobs is preserved; any interest cost savings must directly reduce patient costs. W.I.S.E: N/A
<u>IRB CAP:</u>	The project is not subject to the volume cap, in that the project is exempt from income tax under Internal Revenue Code Section 501(c)(3) for its exempt purposes and is classified thereunder as a non-profit organization.
<u>BOND COUNSEL:</u>	Kennedy & Graven
<u>UNDERWRITER:</u>	Dougherty & Company LLC

City Council Report Preliminary Approval

Resolution

of the

City of Minneapolis

Giving preliminary approval to the proposed issuance of revenue bonds under Minnesota Statutes, Sections 469.152-469.1651, as amended, for the purpose of financing the acquisition and renovation of a school facility for the benefit of Friends of WISE and Carter G. Woodson Institute for Student Excellence, doing business as W.I.S.E. Charter School.

WHEREAS, the City of Minneapolis, Minnesota (the “City”), is authorized by the provisions of Minnesota Statutes, Sections 469.152-469.1651, as amended (the “Act”), to carry out the public purposes described therein and contemplated thereby by issuing its revenue bonds or other obligations to finance, in whole or in part, the costs of the acquisition, construction, improvement, betterment, and extension of “projects” and of related public improvements; and

WHEREAS, the term “project” is defined in Section 469.153, subdivision 2(b), as follows: “Project” also includes 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.; and

WHEREAS, Friends of WISE, a Minnesota nonprofit corporation (the “Corporation”), and an organization exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”), as a result of the application of Section 501(c)(3) of the Code, has submitted an application to the City requesting the issuance of one or more series of revenue bonds pursuant to the Act, in a principal amount not to exceed $9,500,000 (the “Bonds”); and

WHEREAS, the Corporation has proposed that the City loan the proceeds derived from the sale of the Bonds to the Corporation pursuant to the terms of a Loan Agreement between the City and the Corporation (the “Loan Agreement”) to finance: (i) the acquisition and renovation of an existing school facility located at 1501 Aldrich Avenue North in the City (the “Project”); (ii) the funding of a debt service reserve fund to secure payment of the Bonds; (iii) the payment of a portion of the interest on the Bonds; and (iv) the payment of a portion of the costs of issuing the Bonds; and

WHEREAS, the Project is proposed to be leased by the Corporation to Carter G. Woodson Institute for Student Excellence, a Minnesota nonprofit corporation (the “School”), an operating public charter school doing business as W.I.S.E. Charter School, and an organization exempt from federal income taxation under Section 501(a) of the Code, as a result of the application of Section 501(c)(3) of the Code; and

WHEREAS, the School will occupy the Project for use as a public charter school building; and

WHEREAS, the Bonds proposed to be issued by the City to finance the Project will constitute revenue bonds secured solely by: (i) the revenues derived from the Loan Agreement between the City and the Corporation; (ii) a pledge and assignment of all School revenues, including money due to the School from the Minnesota Lease Aid Payment Program (the "Program"); (iii) an agreement to pay all money due to the School from the Program to a dedicated account subject to a monthly sweep to trustee accounts for the benefit of the holders of the Bonds; (iv) other revenues pledged to or otherwise received by the Corporation, except for those revenues necessary for ordinary operational expenses and required under Minnesota law; (v) a debt service reserve fund to be held by a trustee for the benefit of the holders of the Bonds; (vi) a first mortgage and security agreement granted by the Corporation with respect to the Project; (vi) an operating reserve fund; and (vii) other security provided or arranged by the Corporation or the School; and

WHEREAS, pursuant to Section 469.154, subdivision 4, of the Act, prior to submitting an application to the Minnesota Department of Employment and Economic Development ("DEED") for approval of the Project, the City must conduct a public hearing on the proposal to undertake and finance the Project; and

WHEREAS, a notice of public hearing must be published at least once not less than fourteen (14) days, nor more than thirty (30) days, prior to the date fixed for the public hearing in the official newspaper of the City and in a newspaper of general circulation in the City and such notice must state the time and place of the public hearing, the general nature of the Project, the owner of the Project, and an estimate of the principal amount of the Bonds to be issued to finance the Project; and

WHEREAS, such notice must state that a draft copy of the proposed application to DEED, together with all attachments and exhibits, will be available for public inspection following the publication of the notice and must specify the place and times where and when it will be so available; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated thereunder ("Treasury Regulations" or "Regulations"), require that prior to the issuance of the Bonds, the City Council (or other "applicable elected representative") of the City must approve the Bonds after conducting a public hearing thereon preceded by publication of a notice of public hearing (in the form required by Section 147(f) of the Code and applicable Treasury Regulations) in a newspaper of general circulation in the City at least fourteen (14) days prior to the public hearing date; and

WHEREAS, pursuant to the Act and the Code, a notice of public hearing in the form required by the Act and Section 147(f) of the Code was published in *Finance & Commerce*, the official newspaper of the City on February 21, 2009, and in the *Star Tribune*, a newspaper of general circulation in the City on February 21, 2009; and

WHEREAS, the Community Development Committee of the Minneapolis City Council, on behalf of the City, held a public hearing on March 10, 2009, on the proposed issuance of the

Bonds and such public hearing was conducted no less than fourteen (14) days nor more than thirty (30) days following the publication of the notice of public hearing; and

WHEREAS, the Bonds are to be issued as revenue bonds and shall not constitute a general or moral obligation of the City, the Bonds shall not constitute a debt of the City within the meaning of any state constitutional provision or statutory limitation, the Bonds shall not constitute or give rise to a charge against the general credit or taxing powers of the City, the Bonds shall not constitute or give rise to a pecuniary liability of the City, and the Bonds shall be payable solely out of the funds and properties expressly pledged as security therefor;

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

The City Council of the City hereby grants preliminary approval to the issuance of the Bonds for the purposes referenced in this resolution in an aggregate principal amount not to exceed approximately $9,500,000, subject to the approval of the Project by DEED, as required by the Act, and subject to the mutual agreement of the City, the Corporation, and the initial purchaser(s) of the Bonds as to the details of the Bonds and provisions for their payment. But in all events, it is understood that the Bonds shall not constitute a general or moral obligation of the City or a pecuniary liability or charge, lien or encumbrance, legal or equitable, upon any funds, assets, taxing powers, or any other property of the City, except the City's interest in the Loan Agreement; and the Bonds, when, as, and if issued, shall recite in substance that the Bonds, including interest thereon, are payable solely from the revenues received from the Loan Agreement and other property expressly pledged by the Corporation and the School to the payment thereof. The Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The holders of the Bonds shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal of the Bonds, or the interest thereon, or to enforce payment thereof against any property of the City.

It is hereby found and determined that the Project furthers the purposes set forth in the Act and the Project constitutes a "project" within the meaning of Section 469.153, subdivision 2(a) and (b) of the Act.

In accordance with Section 469.154 of the Act, the City shall cooperate with the Corporation in submitting the proposal for the financing of the Project to DEED, including the execution of necessary documentation by City officials.

In accordance with Section 469.154, subdivision 7, of the Act, the officers, employees, and agents of the City are hereby authorized and directed to encourage the Corporation to provide employment opportunities to economically disadvantaged or unemployed individuals. Such individuals may be identified by such mechanisms as are available to the City, such as a first source agreement in which the Corporation agrees to use a designated State employment office as a first source for employment recruitment, referral, and placement.

The Corporation shall pay to the City any and all costs incurred by the City in connection with the Bonds or the financing of the Project, whether or not the financing of the Project is approved by DEED, whether or not the financing is carried to completion, and whether or not the Bonds or operative instruments are executed and delivered. The Corporation shall also comply with the City's deposit and fee policies respecting such revenue bond issues.

All commitments of the City expressed herein are subject to the condition that by March 1, 2010, the City and the Corporation and the initial purchaser of the Bonds shall have agreed to mutually acceptable terms and conditions of the Loan Agreement, the Bonds, and of the other instruments and proceedings relating to the Bonds and their issuance and sale. If the events set forth herein do not take place prior to the date set forth above, or any extension thereof, and the Bonds are not sold within such time, this resolution will expire and be of no further effect unless the date of expiration has been extended by action of the City Council.

The adoption of this resolution does not constitute a guaranty or firm commitment that the City will issue the Bonds as requested by the Corporation. The City retains the right in its sole discretion to withdraw from participation and accordingly not to issue the Bonds, or to issue the Bonds in an amount less that the amount referred to herein, should the City at any time prior to issuance thereof determine not to issue the Bonds, or to issue the Bonds in an amount less than the amount referred to in paragraph 1 hereof, or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents required for the transaction.

The staff of the City is hereby authorized, in cooperation with bond counsel, to take all steps necessary and desirable to proceed to finance the Project through the issuance of the Bonds.

(a) The United States Department of the Treasury has promulgated final Treasury Regulations governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City or a conduit borrower from the City for project expenditures paid prior to the date of issuance of such bonds. Treasury Regulations, Section 1.150-2 (the "Reimbursement Regulation"), requires that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Reimbursement Regulation also generally requires that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds occur within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Reimbursement Regulation generally permits reimbursement of capital expenditures and costs of issuance of the bonds.

(b) The City reasonably expects to reimburse the Corporation for the expenditures made for costs of the Project from the proceeds of the Bonds in an estimated maximum aggregate principal amount of $9,500,000 after the date of payment of all or a portion of the costs of the Project. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Reimbursement Regulation and also qualifying expenditures under the Act.

(c) Based on representations by the Corporation, no expenditures for the Project have been made by the Corporation more than sixty (60) days before the date of adoption of this resolution other than: (i) expenditures to be paid or reimbursed from sources other than the

Bonds; (ii) expenditures permitted to be reimbursed under prior regulations pursuant to the transitional provision contained in Section 1.150-2(j)(2)(i)(B) of the Reimbursement Regulation; (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations; or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Reimbursement Regulation).

(d) Based on representations by the Corporation, as of the date hereof, there are no funds of the Corporation reserved, allocated on a long term-basis, or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside) to provide permanent financing for the expenditures related to the Project to be financed from proceeds of the Bonds, other than pursuant to the issuance of the Bonds. This resolution, therefore, is determined to be consistent with the budgetary and financial circumstances of the Corporation as they exist or are reasonably foreseeable on the date hereof.

This Resolution shall be in full force and effect from and after its passage.